TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1916.

No. 642.

ILLINOIS CENTRAL RAILROAD COMPANY, APPELLANT,

vs.

ROBERT L. GREENE, AUDITOR; SHERMAN GOODPASTER, TREASURER; JAMES P. LEWIS, SECRETARY OF STATE, CONSTITUTING THE BOARD OF VALUATION AND ASSESSMENT FOR THE STATE OF KENTUCKY, ET AL.

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vs.

ILLINOIS CENTRAL RAILROAD COMPANY.

APPEALS FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF KENTUCKY.

FILED AUGUST 31, 1916.

(25,472)
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1 United States District Court, Eastern District of Kentucky, Frankfort.

#731.

ILLINOIS CENTRAL RAILROAD COMPANY, Plaintiff,
vs.
HENRY M. BOSWORTH et al. and ROBERT L. GREENE et al., Their Respective Successors, Defendants.

For satisfactory reasons appearing to the court the time for filing the record in this cause in the Supreme Court of the United States, pursuant to the appeal and cross appeal sued out, is extended until the 27th day of August, 1916.

A. M. J. COCHRAN,
United States District Judge.

Filed July 22, 1916. J. W. Menzies, U. S. Clerk.

2 No. 731.

UNITED STATES OF AMERICA:

The President of the United States to Robert L. Greene, Sherman Goodpaster, James P. Lewis, Thomas M. Jones, M. M. Logan, Charles H. Morris, O. S. Hogan, E. O. Myatt, Victor A. Bradley, and Wiley C. Marshall, Greeting:

You are hereby cited and admonished to be and appear at the Supreme Court of the United States, at Washington, within thirty (30) days from the date hereof, and pursuant to an appeal this day granted by the United States District Court for the Sixth Circuit and Eastern District of Kentucky, wherein the Illinois Central Railroad Company is complainant, and is now appellant, and you are defendants and now appellees, to show cause, if any there be, why the decree rendered against the said appellant, as aforesaid, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable Edward Douglass White, Chief Justice of the Supreme Court of the United States of America, this the 28th day of June, A. D. 1916, and of the Independence of the United States the one hundred and fortieth.

[SEAL.]

A. M. J. COCHRAN,
Judge of the District Court of the United States for the Sixth Circuit and the Eastern District of Kentucky.

Copy of the within citation received this the 29 day of June, A. D. 1916.

M. M. LOGAN,
Counsel for Defendants.

Filed June 29, 1916. J. W. Menzies, U. S. Clerk.

3 Filed July 14, 1916. J. W. Menzies, U. S. Clerk.

UNITED STATES OF AMERICA:

The President of the United States to the Illinois Central Railroad Company, Greeting:

You are hereby cited and admonished to be and appear at the Supreme Court of the United States at Washington within thirty days of the date hereof, and pursuant to a cross appeal this day granted by the United States District Court for the Sixth Circuit and the Eastern District of Kentucky, wherein the Illinois Central Railroad Company is plaintiff and now appellant, and Robert L. Greene, Auditor, Sherman Goodpaster, Treasurer, James P. Lewis, Secretary of State, constituting the State Board of Valuation and Assessment, M. M. Logan, Attorney General of the State of Kentucky, Charles H. Morris, First Assistant Attorney General, O. S. Hogan, Second Assistant Attorney General, D. O. Myatt, Third Assistant Attorney General, Thomas M. Jones, Assistant Auditor, Victor A. Bradley, Commonwealth's Attorney of the Franklin Circuit Court and Wiley C. Marshall, County Attorney of Franklin County are defendants and now appellees, to show cause if any there be why the decree rendered against the said defendants, now appellees, and in favor of the plaintiff, now appellant, should not be reversed and corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Edward Douglass White, Chief Justice of the Supreme Court of the United States of America this the 12 day of July, A. D. 1916, and of the independence of the United States the one hundred and fortieth.

[Seal United States of America, Eastern K't'y Dist. Court.]

A. M. J. COCHRAN,
Judge of the District Court of the United States for the Sixth Circuit and the Eastern District of Kentucky.

Copy of within citation received this the 14th day of July 1916.

EDMUND F. TRABUE,
Counsel for Appellee on Cross-appeal.

4 Record of the Proceedings of the District Court of the United States for the Eastern District of Kentucky in the cause and matter hereinafter stated, and the same being disposed of at a regular term of said Court begun and held in the City of Frankfort on the second Monday in March, 1916, being the 13th day of said month, and the final decree in said cause being entered on the 28th day of June, 1916.

Present: Hon. A. M. J. Cochran, United States District Judge.

#731.

ILLINOIS CENTRAL RAILROAD COMPANY, Plaintiff,
versus
HENRY M. BOSWORTH, THOMAS S. RHEA, and CARL F. CRECELIUS, Individually and as Constituting the Board of Valuation and Assessment of the State of Kentucky, et al., and Robert L. Greene, Sherman Goodpaster, and James P. Lewis et al., Their Respective Successors, Defendants.

Said action was commenced on the 20th day of September 1912 and proceeded to final disposition at the term and day above written, and during the progress thereof, pleadings and papers were filed, process issued and returned, and orders of Court were made and entered in the order and on the dates hereinafter stated, to-wit:

On September 20th 1912, Complainant filed its Bill of Complaint the same being as follows:

5 District Court of the United States for the Eastern District of Kentucky.

ILLINOIS CENTRAL RAILROAD COMPANY, Complainant,
versus
HENRY M. BOSWORTH, THOMAS S. RHEA, CARL F. CRECELIUS, Individually and as Constituting the Board of Valuation and Assessment of the Commonwealth of Kentucky; Henry M. Bosworth, as Auditor of Public Accounts of the Commonwealth of Kentucky; G. B. Likens, as Assistant Auditor of Public Accounts of the Commonwealth of Kentucky; James Garnett, Individually and as Attorney General of the Commonwealth of Kentucky; Charles H. Morris, as First Assistant Attorney General of the Commonwealth of Kentucky; M. M. Logan, as Second Assistant Attorney General of the Commonwealth of Kentucky; O. S. Hogan, as Third Assistant Attorney General of the Commonwealth of Kentucky; Robert B. Franklin, Individually and as Commonwealth's Attorney for the Fourteenth Judicial District, Including Franklin County, Kentucky; Wiley C. Marshall,
6 Individually and as County Attorney for Franklin County, Kentucky; Pres. S. Ray, County Clerk of Jefferson County, Kentucky; Frank G. Corley, County Clerk of Hardin County, Kentucky; W. H. Hager, County Clerk of Meade County, Kentucky; J. W. Moorman, County Clerk of Grayson County, Kentucky; W. S. Tinsley, County Clerk of Ohio County, Kentucky; H. L. Kirkpatrick, County Clerk of Muhlenburg County, Kentucky; W. T. Mills, County Clerk of Hopkins County, Kentucky; U. S. King, County Clerk of Lyon County, Kentucky; D. S. Webb, County Clerk of Livingston County, Kentucky; J. D. Hall, County Clerk of Marshall County, Kentucky; C. G. Singleton, County Clerk of McCracken County, Kentucky; Lee Mason, County Clerk of Graves County, Kentucky; R. T. Roper, County Clerk of Fulton County, Kentucky; J. A. Porter, County Clerk of Hickman County, Kentucky; R. O. Willingham, Jr., County Clerk of Carlisle County, Kentucky; T. J. Neely, County Clerk of Ballard County, Kentucky; W. A. Robinson, County Clerk of Larue County, Kentucky; E. P. Taylor, County Clerk
7 of Davies County, Kentucky; C. E. Sugg, County Clerk of Henderson County, Kentucky; John Bingham, County Clerk of Union County, Kentucky; W. B. Harvey, County Clerk of Webster County, Kentucky; L. E. Guess, County Clerk of Crittenden County, Kentucky; W. L. Davis, County Clerk of Trigg County, Kentucky; R. T. Stowe, County Clerk of Christian County, Kentucky; Hopkins County, Kentucky, and Caldwell County, Kentucky; Graves County, Kentucky; Fulton County, Kentucky; McCracken County, Kentucky, and City of Paducah, Defendants.

Bill in Equity #731.

1. The Illinois Central Railroad Company avers that it is and at all the times hereinafter mentioned was a corporation created

by and organized pursuant to the laws of the State of Illinois, and not under or pursuant to the laws of the State of Kentucky, and a corporation and citizen of the State of Illinois and not of the State of Kentucky, and that the defendants and each and every one of them are citizens of the State of Kentucky and in-
8 habitants of the respective districts of Kentucky as follows: H. M. Bosworth, Robert B. Franklin, G. B. Likens, O. S. Hogan and Wiley C. Marshall of the Eastern District of Kentucky, and all the other defendants of the Western District of Kentucky, and that the matter or amount in dispute in this suit greatly exceeds the sum or value of three thousand dollars exclusive of interest and costs, and that Graves County, Fulton County, McCracken County, Hopkins County and Caldwell County aforesaid are corporations and bodies politic created by and under the laws of the State of Kentucky, and are counties of the State of Kentucky, and citizens of Kentucky, and inhabitants of the Western District of Kentucky, and the matter and amount in dispute between complainant and each county aforesaid and Caldwell County aforesaid in each instance exceeds exclusive of interest and costs the sum or value of $3,000.00. Defendant, city of Paducah, is a municipal corporation and a city of the second class organized under the laws of the State of Kentucky and an inhabitant of the Western District of Kentucky, and the controversy between it and complainant exceeds the sum or value of $3,000.00.

Complainant has set forth in the foregoing caption the several Christian names of each of the defendants whose Christian names were known to complainant, and as to the other defendants whose full Christian names are unknown to the complainant, it has set forth merely the initials of such Christian name or names.

9 2. That the defendants, Bosworth, Rhea and Creeclius constitute, and at all the times hereinafter mentioned constituted the Board of Valuation and Assessment of the State of Kentucky, and at all said times said Bosworth was Auditor of Public Accounts of said State, G. B. Likens was Assistant Auditor of Public Accounts of said State, James Garnett was Attorney General of said State, Charles H. Morris, M. M. Logan, and O. S. Hogan were First, Second, and Third Assistant Attorneys-Generals, respectively, Robert B. Franklin was Commonwealth's Attorney for the Fourteenth Judicial District of Kentucky, including Franklin County, Kentucky, and that Wiley C. Marshall was County Attorney of said Franklin County, and that the County Clerks hereinbefore mentioned in the caption were the county clerks of the respective counties for which they are named as aforesaid, and that all said defendants now hold the respective offices of which they are hereinbefore alleged to have been the incumbents.

3. Complainant operates and at all the times hereinafter mentioned operated as a common carrier of passengers and freight, a unified system of a railroad extending into and through the States of Kentucky, Tennessee, Mississippi, Louisiana, Illinois, Indiana, Iowa, Wisconsin, Minnesota, Nebraska and South Dakota, and that the total mileage operated, owned, leased or controlled by complainant

at any time during the year 1911 or 1912 was 3,986.75 miles, and the total mileage operated, owned, leased or controlled in the State of Kentucky in said period of time was 563.79 miles.

10 4. That between June 30, 1911, and October 1, 1911, complainant duly made and delivered to defendant Bosworth, Auditor aforesaid, a verified statement or report as prescribed by the Kentucky Statutes, especially Section 4078 and succeeding sections correctly and truly setting out the information required by said statutes and made whatever additional statement and gave such additional information as said Board of Valuation and Assessment requested of complainant, so that the said report shows, among other things, the following information in regard to the results of operation of the whole line of the Illinois Central Railroad Company and of the road located in Kentucky:

	I. C. System.	Kentucky.
Operating Revenue	$60,977,031.49	$7,622,738.49
Operating Expenses	43,856,228.13	5,068,952.56
Net Operating Revenue	17,120,803.36	2,553,785.93
Total Net Revenue	17,064,339.12	2,552,922.14
Taxes	2,671,290.22	225,153.72
Operating Income	14,393,048.90	2,327,768.42
Other Income	6,742,438.50	85,260.18
Gross Corporate Income	21,135,487.40	2,413,028.60
Rents Accrued for Lease of Other roads	3,748,071.01	12,039.70
Other Rents	531,720.03	278,018.83
Net Corporate Income	11,315,343.92	1,225,291.79

As a portion of the said report was shown the general balance sheet of the company as of June 30, 1911, showing a grand total of assets $330,139,534.04, as will more fully appear from Exhibit

11 "A" of this bill and further showed that the Illinois Central Railroad Company was a corporation of the State of Illinois and was not incorporated in the State of Kentucky. The said report further showed the total mileage, operated, owned, leased or controlled in Kentucky to be 563.79 miles, and the total length of the entire line or lines, as above, operated, owned, leased, or controlled elsewhere than in Kentucky to be 3,986.75 miles; that the entire net and gross income or earnings received by the said corporation, in said State and out of said State, on business done in said State for twelve months next before June 30, 1911, was gross income $7,707,134.88; net income or earnings $1,225,291.79, and the entire gross and net income or earnings received by the said corporation on business done in the said State and elsewhere for the same length of time was, gross income $67,663,005.75 and net income or earnings $11,315,343.92, all of which will more fully appear in a copy of the report aforesaid furnished by the complainant to said Bosworth, attached hereto as part of this bill, marked Exhibit "A."

Notwithstanding the said report and other information furnished by this complainant to the said Board showed that the complainant owned tangible property of great value situated in many States out-

side of the State of Kentucky and intangible property of great value in railroad property taxable in other States and not taxable in the State of Kentucky, nevertheless afterwards, to-wit: April 12, 1912, the said defendants, Bosworth, Rhea, and Creecelius, assuming to act as said Board of Valuation and Assessment notified complain-
12 ant that it had fixed its preliminary assessment of complainant's franchise at $21,500,000.00 and furnished complainant with such preliminary notice in words and figures, as follows:

Capital Stock	$33,877,383
Less Tangible Assessment	12,377,383
Remainder, Franchise Assessment	21,500,000

Your orator further states that during the year ending June 30, 1911, that the market value of capital stock and funded debt of its system not held in the treasury of the company, such market value being based on the highest quotations on the New York Stock Exchange during the year ending June 30, 1911, as reported by the Commercial and Financial Chronicle was $306,934,100.

That the value of physical or tangible property of the entire system excluding the State of Kentucky, was not less than $320,000,000.

That the assessed value of the tangible property of the said company in Kentucky was $12,377,383.

That the net income of the system operated by the said corporation as an operating company amounted to $15,757,767.55.

That the above net income capitalized at five per cent amounts to $315,155,351, at six per cent amounts to $262,629,459, and at seven per cent amounts to $225,110,965.

5. That for previous years complainant had made and delivered similar reports as required by said statutes of Kentucky, giv-
13 ing the information by said statutes required, and that said Board of Valuation and Assessment had under said statutes assessed complainant's franchise in Kentucky at sums, for said years, respectively, far nearer the real value of said franchise than the assessment made by the present Board. For example: Said Board assessed complainant's franchise:

For the year	1908	at $4,517,940
" " "	1909	at 4,509,680
" " "	1910	at 4,228,425
" " "	1911	at 4,510,320

And that complainant in each and every instance aforesaid, submitted to the said assessment and paid its taxes so assessed within the time allowed by law, although said assessment for each of said years far exceeded the actual value of complainant's franchise in Kentucky. And complainant's property in Kentucky is not and was not at any time in the year 1911 or 1912, nor was its franchise value in Kentucky in said period of any greater value than when assessed in previous years aforesaid, but that the defendants aforesaid, Bosworth, Rhea and Creecelius, for the year 1912, driven thereto by exigency as hereinafter set out, advanced the assessment of com-

plainant's franchise for said year by preliminary assessment at $21,500,000, or about five hundred per cent of the amount assessed as complainant's franchise valuation in any previous year and for final assessment at $14,746,857 or over three hundred per cent of the sum so assessed as the value of said franchise for any previous year,
14 and have notified the complainant through said Bosworth, assuming to so act as Auditor of Public Accounts of said Commonwealth, of said final assessment.

6. That the excessive, exorbitant and extravagant amount of $14,746,857 was fixed by said Bosworth, Rhea and Crecelius as the value of complainant's franchise for Kentucky and so assessed by them, not because it was or is a fair amount to be fixed as such assessment, but arbitrarily and without reference to the real value of such franchise and because of the financial straits of the Commonwealth of Kentucky and the circumstances attending said action of said defendants in assuming to act as said Board of Valuation, to-wit:

That since the assessment of this complainant's franchise for the year 1911 was made as hereinbefore set forth, the State of Kentucky has become financially embarrassed, due to excessive expenditures and extravagant appropriations made by the General Assembly of Kentucky at its session during the months of January, February and March, 1912; that there are now outstanding and unpaid interest bearing warrants of the Commonwealth of Kentucky amounting to more than $2,250,000; that the State has no funds whatever, available to pay same; that the General Assembly at its last session, as before stated, voted extravagant appropriations for numerous public purposes, and also enacted a law providing pensions for veterans of the Confederate Army, which pensions in the aggregate will amount to a vast sum of money, largely more than $——; that said General Assembly made no provision whatever for raising money by
15 taxation for State purposes to meet the appropriations made by it for Confederate pensions or other purposes; that it declined to increase the rate of taxation for State purposes because of the odium attaching to the increasing of tax rates, and that when the problem thus presented, was considered and the question raised in the General Assembly as to how funds should be provided to meet the appropriations made by it at its session aforesaid, it was planned by various officials of the State and members of the Legislature to enact a bill for the assessment of public service corporations, including the railroad companies to the end that a heavier burden of taxation might be devolved upon them, and the necessary funds raised for the purposes of the State without increasing the burden of taxation upon natural persons and the citizens of the State generally, other than public service corporations; that accordingly a bill to that effect providing for a Public Utilities Commission for the assessment of railroads and other public service corporations was introduced and pressed for passage in the Legislature; that the enactment of said bill was vigorously opposed and its defeat secured by some of the defendants herein, then and now composing the State Board of Valuation and Assessment, who publicly and privately assured the members of the General Assembly of their ability and willingness to make such

franchise assessments of the railroads and other public service corporations as would secure to the State all the benefits that could be secured from the enactment of said public utilities bill, and
16 would provide the State with funds from taxation upon the franchises of the railroads and other public service corporations sufficient in amount to pay off the accumulated debt of the State within four years, or during the term of office of the present incumbents of such State offices, respectively; and that pursuant to and in accordance with such assurances and declarations, the defendants composing the State Board of Valuation and Assessment proceeded to carry out their assurances given to the members of the General Assembly, by enormously increasing the franchise assessments of the leading public service corporations in the State of Kentucky, so as to increase their respective burdens of taxation as follows:

Name of corporation.	Franchise assessment for 1911.	Franchise assessment for 1912.
Illinois Central	$4,510,320	$14,746,857
L. & N. R. R.	11,899,200	45,428,074
C. & O. R. R.	2,745,350	18,798,630
Q. & C. R. R.	3,559,320	10,674,200
L., H. & St. L.	1,090,200	1,500,000
Southern R'y	1,011,984	1,500,000
K. & I. Terminal Co	529,600	1,429,600
Lexington & Eastern	138,800	250,000
Mobile & Ohio	406,276	600,000
Glasgow	73,500	113,500
Ohio Valley	201,750	283,328
Ashland Coal & Iron	242,660	343,000
Pennsylvania Term'l	.....	50,000
Louisville & Sou. Ind	4,982	20,000
Louisville R'y Co	6,800,270	8,111,125
Louisville Interurban	.....	1,299,750
So. Covington & Cin'ti	1,500,000	5,000,000
17		
Maysville Street R'y	25,000	60,000
Union L't, H't & P'r, Cov'gt'n	1,600,000	2,500,000
Kentucky Electric, Louisville	300,000	550,000
Louisville Lighting Co	2,500,000	3,100,000
The Pullman Co	300,000	600,000
Adams Express Co	650,000	900,000
American Express Co	150,000	200,000
Southern Express Co	250,000	350,000
Western Union Telegraph	539,000	618,000
Postal Telegraph	34,000	82,000

That after the adjournment of the General Assembly on March 13, 1912, the defendants, members of the State Board of Valuation and Assessment, proceeded to the work of assessing the franchises of

the various public service corporations in the State, including complainant, and in so doing, proceeded to and did employ, without authority or warrant at law, one Justus Goebel, of Covington, and one John L. Rich, a lawyer of Kentucky, to make up and report to the Board of Valuation and Assessment their recommendations with respect to the amounts at which the various railroads including complainant and the other public service corporations of the State should be assessed; that the work of investigating the value of your complainant's franchise assessible in Kentucky, was delegated by defendants, members of the State Board of Valuation and Assessment to said Goebel and Rich, was largely if not wholly done by them, and their recommendations adopted by the Board as its conclusions, without proper or any consideration by the members of the Board as to the requirements of the law with respect to the elements lawfully
18 to be considerd in determining the valuation of such franchise for assessment in Kentucky.

7. That accordingly said defendants Bosworth, Rhea and Crecelius in assuming to fix the values of complainant's franchise for assessments, ignored the Statute of Kentucky in such case made and provided requiring them to fix the value of complainant's entire capital stock and to then deduct therefrom the value of complainant's total tangible property in and outside the State of Kentucky and to distribute or apportion the residue thus resulting, according to mileage or the length of complainant's railroads within the State of Kentucky as compared with its total mileage of rails in and outside of said State, when had said Board followed said statute, there would have been no franchise valuation or value whatsoever appearing for assessment for the year 1912. But that instead of following the said statutes, the said defendants in conjunction with the said Goebel and Rich, and in accordance with the methods by them suggested and proposed, took the so-called net earnings of complainant for the State of Kentucky for the year ending June 30, 1911, and for the next preceding year and averaged them, and capitalized the result or amount thus secured, at six per cent per annum and assumed to equalize the amount thus obtained, with other property in the State of Kentucky, by taking eighty per cent thereof as the value of complainant's franchise in Kentucky, although the real estate of the State of Kentucky, as hereinafter shown, was generally, systemat-
19 ically, intentionally and habitually assessed at not exceeding sixty per cent of its fair cash value; whereby the defendants assessed arbitrarily and without reference to its value for the year 1912, complainant's franchise for the State of Kentucky, denying to complainant the equal protection of the law and taking its property without due process, in violation of the Constitution of Kentucky and the Fourteenth Amendment to the Constitution of the United States.

8. That after the tentative assessment of complainant's franchise was made as hereinbefore stated and before any final assessment thereof was made, your complainant through its representatives appeared within the time permitted by law, before the said Board which sat at Frankfort to hear its complaint, the said Goebel and Rich being also present at said hearing and advising the said Board on

every occasion, and your complainant protested against the tentative assessment which had been made of its franchise and produced statements of its assets, earnings, mileage, and reports showing that even upon the unlawful theory upon which the said Board was proceeding in ascertaining the value of its franchise in Kentucky, its said franchise could not be assessed at any sum in excess of $2,466,335.00. A copy of its written protest, filed before said Board on May 10, 1912, is filed as part hereof, marked Exhibit "B." Notwithstanding its said protest and objection and notwithstanding the requirements of the law of Kentucky, the defendants, members of said Board disregarded the facts and figures shown in said statements and reports submitted by the complainant (which said statements and reports
20 were true and correct), and disregarded the law of Kentucky and the rights of the complainant under the Constitution and laws of Kentucky and under the Fourteenth Amendment to the Constitution of the United States, and on August 31, 1912, made and fixed the final assessment of complainant's franchise in Kentucky at $14,746,837.00.

9. Your complainant is and always has been ready and willing to pay all taxes due the Commonwealth of Kentucky or any of the counties, cities, towns or taxing districts thereof and has already paid to said Commonwealth and said counties, cities, towns and taxing districts the taxes assessed by the Railroad Commission for the current year, and that complainant submitted to and paid all taxes, State and local, upon the assessments heretofore made for previous years by the said Board of Valuation and Assessment, but did so without sufficient inquiry into its obligation to pay the said taxes, or information upon which it could determine whether or not the said amounts respectively were really due from complainant. But that since the final assessment assumed by said Board to have been made of complainant's franchise as aforesaid, to-wit: August 31, 1912 complainant has for the first time received full information concerning a physical valuation of all its tangible properties for the greater part of its entire system, which valuation had not been theretofore made, the necessity therefor never having been heretofore until lately, existing, and that from said valuation it appears as aforesaid that after deducting the value of complainant's physical or tangible property of its entire system from the total value of its capital stock,
21 there remains no residue or remainder, and therefore none for apportionment or distribution as required by the statutes of the State of Kentucky in the computation of franchise valuation for taxation; that in all States in which complainant's railroads or the railroads operated by complainant extend, except the State of Kentucky, complainant's property is assessed by a single board of assessment, and assessment of tangible and intangible property is not separated as in the State of Kentucky. Wherefore and for other reasons it has not become necessary until lately for complainant to have made a physical valuation of its tangible properties over its system.

10. That the defendants, Bosworth, Rhea and Crecelius as said Board of Valuation and Assessment have never apportioned the assessment which they have assumed to make for the current year as

aforesaid, to the several counties or other taxing districts through which complainant's railroads in Kentucky extend, but threaten and are about so to do and that said Bosworth, as Auditor aforesaid, threatens and he or the said G. B. Likens as Assistant Auditor aforesaid is about to certify to the county clerks of the several counties in Kentucky aforesaid, the amounts claimed to be due to the said counties and other taxing districts. But that nevertheless, and notwithstanding the Statutes of Kentucky do not authorize such certification by said Auditor until after thirty days from time of notice of the final assessment of such franchise and notwithstanding said period of thirty days has not lapsed, said defendant Bos-
22 worth has nevertheless, to-wit: within fifteen days after said final assessment assumed to certify to the county clerks of said counties the sums assumed to be due to said counties, cities, towns and taxing districts and that unless enjoined and immediately enjoined and restrained, the said county clerks will forthwith and without delay certify said assessments respectively to the tax collectors for said counties, cities, towns and taxing districts for collection, and said collecting officers will immediately give to complainant notice of such assumed assessments and that the clerks of five of said counties, to-wit: Graves County, Fulton County, McCracken County, Hopkins County, and Caldwell County, have already so certified said assumed assessments to the sheriffs of their respective counties who have already, to-wit: September 14, and September 15, 1912, notified complainant of said assumed assessment, and likewise the city of Paducah has notified this complainant all contrary to law and the statutes of the State of Kentucky, but forming the basis of unwarranted, vexatious and numerous suits, actions and legal proceedings against complainant, which will be immediately instituted and from time to time instituted, to the great annoyance and irreparable injury and damage of complainant, and that unless immediately enjoined and restrained by this court, the defendants, James Garnett, as Attorney General, and Charles H. Morris and M. M. Logan and A. S. Hogan as Assistant Attorney Generals and Robert B. Franklin as Prosecuting Attorney as aforesaid, and Wiley C. Marshall as County Attorney of Franklin
23 County as aforesaid, will institute civil or penal actions or procure indictments against complainant, based upon its assumed or supposed delinquency in the payment of the taxes claimed by the defendants to be due upon the illegal and unauthorized assessment aforesaid and will bring such actions or procure such indictments from day to day or from time to time with the view and for the purpose of forcing the complainant to pay the illegal and unjust demands asserted against it on behalf of the Commonwealth of Kentucky and all the counties, cities, towns and taxing districts through which complainant's line extends, all of which are based upon the illegal and arbitrary assessment of its franchise in Kentucky, assumed or attempted to be made by the Board of Valuation and Assessment and assumed or about to be apportioned by said Board to the various counties, cities, towns and taxing districts and unlawfully certified or about to be certified to the defendants, county

clerks of the various counties, by Henry M. Bosworth, Auditor, or G. B. Likens, Assistant Auditor, as aforesaid, and unlawfully certified or about to be certified by the various defendants, county clerks, to the collecting officers of their respective counties; that the said penalties for alleged delinquency of your complainant, provided for in Section 4091 of the Kentucky Statutes, are of such character and amount that the risk and danger of incurring the penalties provided for in Section 4091 of the Kentucky Statutes for the alleged violation or delinquency of said complainant in the payment of taxes based upon said illegal assessments, are of such char-
24 acter and amount as to render it inequitable and unjust to require this complainant to defend all of such claims in an action at law, and that complainant will be subjected to numerous prosecutions and suits or civil actions for the recovery of said taxes and penalties and claims thereon; wherefore the complainant is utterly without any adequate remedy at law for protecting its rights or presenting its defenses to said illegal claims under the Constitution and laws of Kentucky, or under the Constitution of the United States and especially the Fourteenth Amendment thereto. And unless this court will interfere by injunctive process to restrain the enforcement and collection of said claims, taxes and penalties, and unless a temporary restraining order issue immediately herein, great and irreparable injury will result to complainant, which would be subjected to a vast number of actions and called upon to defend a vast number of suits and prosecutions, and thus stripped of its property without due process of law. And unless a temporary restraining order issue immediately, the county clerks aforesaid, will immediately certify before a preliminary injunction can issue, through the divers collecting officers of the counties, cities, towns and taxing districts aforesaid, whereby the operation of any injunction against such clerks would be frustrated.

11. That the unauthorized and illegal franchise assessment aforesaid, constitutes a cloud and, as claimed by defendants constitutes a lien upon the property in the Commonwealth of Kentucky, operated, owned, leased and controlled by complainant, and that unless enjoined and restrained by this Honorable Court, numerous
25 repeated and vexatious suits will be instituted to enforce or foreclose such claimed lien and such suits will be instituted in behalf, or by reason of the taxes assumed to be due the Commonwealth as well as such taxes so assumed to be due to the various counties, cities, towns and taxing districts.

Your orator further says that the State of Kentucky has denied to your orator the equal protection of the laws contrary to the Fourteenth Amendment of the Constitution of the United States in this, that the said Board fixed the value of your orator's corporate franchise by capitalizing the net income of the said company derived in the said State, whereas in case of other railroad companies, the lines of which extend beyond the limits of the State of Kentucky, the said Board did not fix the value of the capital stock in the State of Kentucky by capitaizing the net income derived in the said State but fixed the said capital stock of other railroad corporations whose

lines extend within and beyond the limits of the said State without regard to the gross and net income or earnings received in the State of Kentucky and out of the State of Kentucky on business done in the State of Kentucky and without reference to the gross and net income or earnings last aforesaid, and in a manner more favorable to the said other corporations or some of them, whereby one rule or basis of assessment was applied to your orator and another and different rule or basis of assessment was applied to other railroad corporations having lines extending within and beyond the
26 limits of the State of Kentucky; that the said Commissioners have refused to give any information as to the manner in which they arrived at the valuation of the capital stock of the said other corporations, but as your orator is informed and believes in each instance it was on a different basis of assessment from that applied to your orator. For your orator further says on information and belief that as to the said other railroad corporations the information was not in existence as to what was the gross and net income or earnings received in the State of Kentucky and out of the State of Kentucky on business done by them in the said State respectively, and that the said information was not included in the statements made by the said other railroad corporations to the Auditor of Public Accounts of the State of Kentucky, so that in case of your orator alone of all the railroad corporations whose lines extend within and beyond the limits of the State of Kentucky was the rule applied of capitalizing the net earnings of the corporation in the State of Kentucky whereby your orator was denied the equal protection of the laws contrary to the Fourteenth Amendment of the Constitution of the United States, by reason of the fact that a more favorable rule or basis of assessment was applied to other railroad corporations as aforesaid, or to some of them.

Wherefore, and forasmuch as complainant is remediless in the premises according to the common law and remediable only in equity, and to the end that complainant may not be subjected to a multiplicity of suits which will otherwise result, and may not suffer irreparable injury and damage, and may be permitted to pursue and carry on its business without unlawful hinderance or
27 obstruction, and that the railroads by complainant operated in the Commonwealth of Kentucky, as aforesaid, and its other property therein may not be subjected to illegal liens and clouds, complainant prays for a writ of subpœna to issue against the defendants, and each and every one of them named and described as aforesaid, to appear and full and true answer make to this bill of complaint, said defendants Bosworth, Rhea and Crecelius stating in said answer the method whereby they reached the so-called final assessment aforesaid (of which notice was given complainant, August 31, 1912), but not under oath, answer under oath being hereby waived, and that said defendants, and each and every one of them, be enjoined by final decree, and meanwhile, by a preliminary injunction, as follows, to-wit: That said Bosworth, Rhea and Crecelius, individually, or acting as the Board of Valua-

tion and Assessment of Kentucky, be enjoined and restrained from apportioning to any of the county clerks named in the caption, or any other officers of the counties, cities, towns or taxing districts in said counties of which said clerks or the county officers are officials, the aforesaid so-called assessment, or any part thereof, for taxation or for extension of tax rates thereon; that said Bosworth, individually, or as Auditor of Public Accounts of said State, *he* enjoined and restrained from certifying to the said county clerks, or any of them, or any other officers of the counties of which said defendants are clerks, the aforesaid so-called final assessment; that the said defendants, county clerks aforesaid, and each and every one of them, be enjoined and restrained from certifying to the
28 sheriff or other tax collector for the county, cities, towns and taxing districts, respectively, in the county of which he is clerk; any of the apportionments heretofore or hereafter purported to be certified to them by the said Bosworth or the said Likens; that the counties named in the caption and likewise the city of Paducah be enjoined and restrained from collecting or taking any steps to collect taxes upon the amount or amounts certified to their county clerks, respectively, as aforesaid, and that the defendant Bosworth be enjoined and commanded to cancel the certification heretofore illegally and without authority made to the defendants, county clerks aforesaid; that the defendant Likens, Assistant Auditor, be likewise enjoined as is herein prayed with respect to the said Bosworth; that the defendant Garnett, and the defendants Morris, Logan, Hogan, Franklin and Marshall be enjoined and restrained from instituting any action or procuring an indictment, warrant or other proceeding in court or at law to coerce the payment by complainant of any taxes upon the aforesaid illegal assessment, or any part thereof, whether on behalf of the Commonwealth or any county, city, town or taxing district, until the final order of this court, and that meanwhile a temporary restraining order issue in accordance with the prayer aforesaid for a preliminary injunction, and for all other and further relief to which complainant may be entitled, including its costs herein incurred.

BLEWETT LEE,
TRABUE, DOOLAN & COX,
Counsel for Complainant.

29 STATE OF ILLINOIS,
Cook County, ss:

Charles H. Markham, being first duly sworn, says that he is the president of the complainant, Illinois Central Railroad Company, and his office is at Chicago, the principal office of complainant; that he has read the foregoing bill of complaint and knows the contents thereof, and that the allegations thereof are true, except such allegations as are made on information and belief, and that he believes such allegations so made to be true.

C. H. MARKHAM.

Subscribed and sworn to before me, in Chicago, Cook County, Illinois, 17th day of September, 1912. My Commission as a Notary Public expires the 21st day of December, 1915.

[SEAL.] M. J. O'CONNELL,
Notary Public.

30 Exhibit A referred to in and filed with said Bill in Equity is as follows, to-wit:

31 EXHIBIT "A".

Form A-8.

Report of the Illinois Central Railroad Company Operating the Chicago, St. Louis & New Orleans Railroad, Paducah Union Depot Co., and the Kentucky Valley Railroad Property, under Leases Covering Franchises as well as Tangible Property, to the Auditor of Public Accounts of Kentucky, June 30, 1911.

Article IV, Subdivision 1.

Assessment of Certain Corporations.

§ 1. Every railway company or corporation, and guarantee or security company, gas company, water company, ferry company, bridge company, street railway company, express company, electric light company, electric power company, telegraph company, press dispatch company, telephone company, turnpike company, palace-car company, dining-car company, sleeping-car company, chair-car company, and every other like company, corporation or association, also every other corporation, company or association having or exercising any special or exclusive privilege or franchise not allowed by law to natural persons, or performing any public service, shall, in addition to the other taxes imposed on it by law, annually pay a tax on its franchise to the State, and a local tax thereon to the county, incorporated city, town or taxing district, where its franchise may be exercised. The Auditor, Treasurer and Secretary of State are hereby constituted a Board of Valuation and Assessment for fixing the value of said franchise, except as to turnpike companies, which are provided for in section 1 of subdivision 4 of this article, the place or places where such local taxes are to be paid by other corporations on their franchise, and how apportioned, where more than one jurisdiction is entitled to a share of such tax, shall be determined by the Board of Valuation and Assessment, and for the discharge of such other duties as may be imposed on them by this act. The Auditor shall be chairman of said board, and shall convene the same from time to time, as the business of the board may require. It shall be the duty of the Attorney-General, when

requested by the Board of Valuation and Assessment, to attend said board at its meetings and advise with same in its proceedings.

§ 2. In order to determine the value of the franchises mentioned in the next preceding section, shall annually, between the thirtieth day of June and the first of October, make and deliver to the Auditor of Public Accounts of this State a statement, verified by its president, cashier, secretary, treasurer, manager or other chief officer or agent, in such form as the Auditor may prescribe, showing the following facts, viz.:

Name of corporation: Illinois Central Railroad Co.

Name of principal place of business of the corporation, company or association you represent: 135 Park Row, Chicago, Ill.

Give the correct post-office address of the company: 135 Park Row, Chicago, Ill.

Give the name and official position of the officer making this report: —.

Name: —. Position: —.

Give name of State under which company is incorporated: State of Illinois.

The kind of business in which the said corporation, company or association is engaged: Common Carrier.

The amount of capital stock, preferred and common, of the said corporation, company or association, as of date June 30, 1911:

Preferred: None; Common: 109,296,000.00; Debenture: 9,989,-700.00.

Number of shares, preferred and common, composing the capital stock of the said corporation, company or association, on June 30, 191—.

Preferred: None; Common: 1,092,960; Debenture: 99,897.

Amount of capital stock, as above, paid up, $—.

Par value of the preferred stock, as above, $—.

Par value of the common stock, as above, $—as above stated.

Real value of the stock, as above: Preferred, $—. Common, $—.

Highest price at which the stock above mentioned was sold at a bona fide sale within twelve months next before June 30, 1911. $—per share.

Amount of surplus fund and undivided profits, and the value of all other assets of the said corporation, company or association, on June 30, 1911.

Surplus fund, $—; Undivided profits, $—; Value of all other assets, $—.

State the total amount of indebtedness, as principal, of the said corporation, company or association, on June 30, 191—.

Bonded indebtedness, $—; Rate of interest paid 3 to 5 per cent.

Other indebtedness, $—; Amount of interest paid, $—.

Total indebtedness, $—.

(In ink—See general balance sheet filed herewith.)

State separately the total amount of gross and net earnings, or income of the said corporation, company or association, including

interest on investments, and income from all other sources for twelve months next before June 30, 191—.

Gross earnings or income			$.....
Less expenses,	Salaries	$.....	
	Wages	$.....	
	Interest	$.....	
	Dividends	$.....	
	Enlargement of plant	$.....	
	Maintenance of equipment	$.....	
	Depreciation	$.....	
	Other expenses	$.....	Total, $.....
Net income			$.....

Amount and kind of tangible property in this State owned by the said corporation, company or association on September 1, 191—

Amount of tangible property, $12,333,673, Assessment 1910.

Kind of tangible property: All the property of the Chicago, St. Louis and New Orleans Railroad Co. in Kentucky; and also all the property of the Paducah Union Depot Co. and Kentucky Valley R. R. Co. all being in the State of Kentucky and operated by Illinois Central Railroad Co. under lease of Tangible property, Franchise and everything else——

32 Illinois Central Railroad Company.

Statement Showing Result of Operation of the Whole Line and of the Road Located in Kentucky for the Year Ended June 30, 1911.

	I. C. System.	Kentucky.
Operating Revenue	$60,977,031.49	$7,622,738.49
Operating Expenses	43,856,228.13	5,068,952.56
Net Operating Revenue	17,120,803.36	2,553,785.93
Outside Operations—Net Deficit	56,464.24	863.79
Total Net Revenue	17,064,339.12	2,552,922.14
Taxes	2,671,290.22	225,153.72
Operating Income	14,393,048.90	2,327,768.42
Other Income	6,742,438.50	85,260.18
Gross Corporate Income	21,135,487.40	2,413,028.60
Rents Accrued for lease of other Roads	3,748,071.01	12,039.70
Other Rents	531,720.03	278,018.83
Other Interest	1,722.23	.....
Other Deductions	7,682.43	.....
Interest accrued on Funded Debt	5,530,947.78	897,678.28
Net Corporate Income	11,315,343.92	1,225,291.79

The foregoing is true and correct to the best of my knowledge, information and belief.

M. P. BLAUVELT,
Comptroller.

STATE OF ILLINOIS,
County of Cook, ss:

Subscribed and sworn to before me this 28th day of September, A. D. 1910.

C. B. WINTERSMITH,
Notary Public.

33 Illinois Central Railroad Company.

General Balance Sheet—June 30th, 1911.

Assets.	1911.
Property investment:	
Road and equipment:	
Investment to June 30, 1907	$95,188,585.07
Investment since June 30, 1907	19,155,616.42
Reserve for accrued depreciation—credit	2,803,859.81
Total road and equipment	$111,540,341.68
Securities:	
Securities of proprietary, affiliated and controlled companies—pledged	27,664,070.67
Securities of proprietary, affiliated and controlled companies—unpledged	18,460,907.79
Other investments:	
Advances to proprietary, affiliated and controlled companies for construction, equipment and betterments	64,792,227.25
Miscellaneous investments	44,352,977.90
Total property investment	$266,810,525.29
Working assets:	
Cash	$15,135,860.36
Securities issued or assumed—held in treasury	30,265,640.00
Marketable securities	2,326,939.32
Loans and bills receivable	223,185.87
Traffic and car-service balances due from other companies	73,452.10
Net balance due from agents and conductors	1,853,222.87
Miscellaneous accounts receivable	2,346,093.11
Material and supplies	3,935,029.58
Other working assets	.....
Total working assets	$56,159,423.21
Accrued income not due:	
Unmatured interest, dividends and rents receivable	$2,400,026.93
Deferred debit items:	
Advances	$1,784,583.68
Rents and insurance paid in advance	5,276.42
Special deposits	53,172.04
Cash and securities in insurance and other reserve funds	2,067,701.58
Cash and securities in provident funds	250,000.00
Other deferred debit items	608,824.89
Total deferred debit items	$4,769,558.61
Grand total	$330,139,534.04

Liabilities.	1911.
Stock:	
Common capital stock	$109,296,000.00
Debenture 4% leased line stock	9,989,700.00
Total stock	$119,285,700.00
Mortgage, bonded and secured debt:	
Bonded debt	$187,351,000.00
Real estate mortgage	100,000.00
Total mortgage, bonded and secured debt	$187,451,000.00
Total capital liabilities	$306,736,700.00
Working liabilities:	
Loans and bills payable	$200,000.00
Traffic and car-service balances due to other companies	249,186.61
Audited vouchers and wages unpaid	5,237,996.97
Miscellaneous accounts payable	163,163.26
Matured interest, dividends and rents unpaid	1,397,197.55
Matured mortgage, bonded and secured debt unpaid	10,146.97
Other working liabilities	222,224.08
Total working liabilities	$7,479,915.44
Accrued liabilities not due:	
Unmatured interest, dividends and rents payable	$5,246,584.80
Taxes accrued	277,387.12
Total accrued liabilities not due	$5,523,971.92
Deferred credit items:	
Operating reserves	$317,359.38
Liability on account of provident funds	261,278.79
Other deferred credit items	803,795.01
Total deferred credit items	$1,382,433.18
Grand total liabilities	$321,123,020.54
Appropriated surplus:	
Additions to property since June 30, 1907, through income	164,847.23
Reserve for insurance fund	2,067,701.58
Reserves from income or surplus for dividends	.....
Profit and loss:	
Balance	6,783,964.69
Grand total	$330,139,534.04

34 State where the tangible property aforesaid is situated, assessed or liable to assessment.

County, —; City, —; Town, —; number or name of taxing district or precinct, —.

State the fair cash value of said tangible property, at the price it would bring at a fair voluntary sale. $—.

Give the amount of stock, bonds and other property located outside the State of Kentucky.

Stocks	$.....
Bonds	$.....
Cash	$.....
Other property	$.....
Total property outside the State....	$.....

Specify in detail the entire length of line or lines operated, owned, leased or controlled, in each county, city, town and taxing district in this State. [Give the length of line in each county, town or taxing district separately.] —.

State the total mileage operated, owned, leased or controlled in this State: 563.79 miles.

Also the total length of the entire line or lines, as above, operated, owned, leased or controlled as above, elsewhere than in this State: 3986.75 miles.

State the entire net and gross income or earnings received by the said corporation, company or association, in this State and out of this State, on business done in this State for twelve months next before June 30, 1911. Gross income, $7,707,134.88; Net income or earnings, $1,225,291.79.

State the entire gross and net income or earnings received by the said corporation, company or association, on business done in this State and elsewhere for the same length of time. Gross income, $67,663,005.75; Net income or earnings, $11,315,343.92.

M. P. BLAUVELT,
Comptroller.

STATE OF ILLINOIS,
Cook County, ss:

This day personally appeared before the undersigned, a Notary Public in and for the State and county aforesaid M. P. Blauvelt whose signature is attached thereto, and made oath that the statements made in answer to the above interrogatories are true to the best of his knowledge and belief.

Given under my hand this 28th day of September, 1911.

C. B. WINTERSMITH,
Notary Public.

35 Exhibit B referred to in and filed with said Bill in Equity is as follows, to-wit:

(Here follows "Exhibit B," marked page 36.)

To the Honorable Board of Valuation and Assessment of the State of Kentucky:

GENTLEMEN: The Illinois Central Railroad Company, having received notice, a "Capital Stock" at $33,877,383, thereby finding a "Franchise Value" of $21,500,000 on hereby protests that the said amounts are larger than the facts will warrant, and "Capital Stock" and $14,843,718 is the fair equalized value thereof, and that $2,466,3 pertaining to the 564 miles of railroad operated by the said Illinois Central Railroad C following statement is presented, and you are respectfully asked to change the asses

A Valuation of the "Capital Stock" and an Equitable Assessment of the "Franchise" F
by the Illinois Central R. R. Co. in Ky

The three recognized methods of valuing railroad property are.—1. Capitali
3. Cost to Reproduce.

1. Capitalizing Income:

	Net operating income in Ky.
1907.....	$1,339,460
1908.....	1,207,329
1909.....	1,445,227
1910.....	1,740,869
1911.....	2,327,768
Years..... 5)	8,060,653
Capitalize (@ 6%)	1,612,131

NOTE: The value of "Capital Stock" is necessarily a comparatively stable quantity. It is more or less an intrinsic value that does not fluctuate with the fortunes or misfortunes of any single year, therefore it can be measured by the Income of only A Series of Years—say 5, at least.

	$26,868,850	= Full Value, 1st method.
Stock & Bonds....	25,855,154	= " " 2nd "
Cost to reproduce.	25,675,918	= " " 3rd "
	3) 78,399,922	
	26,133,307	= Average Full Value.
Equalize at.....	56.8 %	
	209,066,456	
	156,799,842	
	130,666,535	
	$14,843,718	= Equalized Value of "Capital Stock."
Deduct.....	12,377,383	= "Tangible."
	2,466,335	= A fair "Franchise" Assessment, according to Sec. 174 (owned by natural persons or corporations, shall be

NOTE: Original, authentic documents verifying the statements above have been the Board.

Most Respectfully Submitted,

By

Frankfort, Ky., May 10, 1912.

dated April 12, 1912, that you had valued its
n which to extend the taxes for the year 1912.
l insists that $26,133,207 is the Full Value of the
335 is an equitable assessment of the "Franchise"
Company in Kentucky. In evidence whereof the
sment in accordance therewith.

Pertaining to the 564 Miles of Railroad Operated
Ky.

ing Net Operating Income. 2. Stock and Bonds.

tio of Assessment of General Property, on which
s will be paid for 1912, to the Full Value of same
rty, in 20 I. C. Counties, according to opinions of
ty Officials, Bankers, and other local men of
's presumably best informed in their respective
ties, as follows:

Counties.	%	Counties.	%
Ballard	55	Hopkins	50
Caldwell	60	Larue	65
Carlisle	60	Livingston ...	65
Christian	60	Lyon	60
Daviess	60	Marshall	51
Fulton	60	McCracken ...	38.5
Graves	60.3	Muhlenberg ..	56.6
Grayson	60	Ohio	70
Henderson ...	60	Trigg	66.2
Hickman	50	Webster	27.5
			20) 1,135.1
Average.....			56.8%

74 of the Ky. Constitution.—"All property, whether
be taxed *in proportion* to its Value."

en submitted for the inspection of each member of

ILLINOIS CENTRAL RAILROAD CO.,
By WM. L. TARBET,
Land and Tax Commissioner.

37 On the same day, to-wit, on September 20, 1912, the following motion was filed and entered herein, to-wit:

District Court of the United States, Eastern District of Kentucky.

ILLINOIS CENTRAL RAILROAD COMPANY, Complainant,
vs.
HENRY M. BOSWORTH et al., Defendants.

Motion for an Injunction Pendente Lite.

Complainant moves for an injunction pendente lite in accordance with the prayer of the bill of complainant.

TRABUE, DOOLAN & COX,
Counsel for Complainant.

BLEWETT LEE,
Of Counsel.

38 Subpœna in Chancery, issued in said cause on the 20th day of September, A. D. 1912, is in words and figures as follows, to wit:

39 [Seal United States of America, Eastern Kty. Dist. Court.]

The President of the United States of America to Henry M. Bosworth, Thomas S. Rhea, Clark F. Crecelius, individually and as constituting the Board of Valuation and Assessment of the Commonwealth of Kentucky; Henry M. Bosworth, as Auditor of Public Accounts of the Commonwealth of Kentucky; G. B. Likens, as Assistant Auditor of Public Accounts of the Commonwealth of Kentucky; James Garnett, individually and as Attorney General of the Commonwealth of Kentucky; C. H. Morris, individually and as First Assistant Attorney General of the Commonwealth of Kentucky; M. M. Logan, individually and as Second Assistant Attorney General of the Commonwealth of Kentucky; O. S. Hogan, individually and as Third Assistant Attorney General of the Commonwealth of Kentucky; Robert B. Franklin, individually and as Commonwealth's Attorney for the Fourteenth Judicial District, including Franklin County, Kentucky; Wiley C. Marshall, individually and as County Attorney for Franklin County, Kentucky; Pres. S. Ray, County Clerk of Jefferson County, Kentucky; Frank G. Corley, County Clerk of Hardin County, Kentucky; W. H. Hager, County Clerk of Meade County, Kentucky; J. W. Moorman, County Clerk of Grayson County, Kentucky; W. S. Tinsley, County Clerk of Ohio County, Kentucky; H. L. Kirkpatrick, County Clerk of Muhlenberg County, Kentucky; W. T. Mills, County Clerk of Hopkins County, Kentucky; U. S. King, County Clerk of Lyon County, Kentucky; D. S. Webb, County Clerk of Livingston County, Kentucky; J. D. Hall, County Clerk of Marshall County, Kentucky; G. G. Singleton, County Clerk

of McCracken County, Kentucky; Lee Mason, County Clerk of Graves County, Kentucky; R. T. Roper, County Clerk of Fulton County, Kentucky; J. A. Porter, County Clerk of Hickman County, Kentucky; R. A. Willingham, Jr., County Clerk of Carlisle County, Kentucky; T. J. Neely, County Clerk of Ballard County, Kentucky; W. A. Robinson, County Clerk of Larue County, Kentucky; E. P. Taylor, County Clerk of Daviess County, Kentucky; C. E. Sugg, County Clerk of Henderson County, Kentucky; John Bingham, County Clerk of Union County, Kentucky; W. B. Harvey, County Clerk of Webster County, Kentucky; L. E. Guess, County Clerk of Crittenden County, Kentucky; W. L. Davis, County Clerk of Trigg County, Kentucky; R. T. Stowe, County Clerk of Christian County, Kentucky; Hopkins County, Kentucky; Graves County, Kentucky; Fulton County, Kentucky; Caldwell County, Kentucky; McCracken County, Kentucky, and City of Paducah, Greeting:

You are hereby commanded to appear before our District Court of the United States of America for the Eastern District of Kentucky, at the Federal Court Hall in the city of Frankfort, on the first Monday in Novr. next, to answer a Bill in Equity exhibited against them in our said court by Illinois Central Railroad Company, which you shall in no wise omit, under the penalty of the law.

Witness the Honorable A. W. J. Cochran, Judge of the District Court of the United States of America, and the seal of our said District Court hereto affixed, at the Clerk's office of said court, in Frankfort, this 20th day of September, A. D. 1912, and in the 137th year of our Independence.

[Seal United States of America, Eastern Kty. Dist. Court.]

Attest:

J. W. MENZIES,
C. D. C., E. K. D.,
By C. N. WIARD,
His Deputy.

Memorandum.

The defendants are to enter their appearance in the suit in the Clerk's office on or before the 4th day of Novr. next, the day at which the writ is returnable, otherwise the bill may be taken pro confesso.

J. W. MENZIES, *Clerk.*
By C. N. WIARD,
His Deputy.

40 Marshal's return on the foregoing Subpœna in Chancery is in words and figures as follows, to-wit:

Received this Spa. in Ch'y at Frankfort, Ky., on Sept. 20, 1912, and executed same in full on Sept. 21, 1912, by delivering true copies to the following named persons at Frankfort, Ky.: Henry M. Bosworth, Thomas S. Rhea, Clark F. Crecelius, individually and as

constituting the Board of Valuation and Assessment of the Commonwealth of Kentucky, Henry M. Bosworth as Auditor of Public Accounts of the Commonwealth of Kentucky; G. B. Lykins as Assistant Auditor of Public Accounts of the Commonwealth of Kentucky; James Garnett, individually, and as Attorney General of the Commonwealth of Kentucky; C. H. Morris, Individually, and as First Assistant Attorney General of the Commonwealth of Kentucky; M. M. Logan, individually, and as Second Assistant Attorney General of the Commonwealth of Kentucky; O. S. Hogan, individually, and as Third Assistant Attorney General of the Commonwealth of Kentucky; Robert B. Franklin, individually, and as Commonwealth's Attorney for the Fourteenth Judicial District, including Franklin County, Kentucky; Wiley C. Marshall, individually and as County Attorney for Franklin County, Kentucky.

A. B. PATRICK, *U. S. M.*,
By N. I. McDANIEL, *D. M.*

Clerk's endorsement on the foregoing Subpœna in Chancery is in words and figures as follows, to-wit:
Returned and filed September 26, 1916. J. W. Menzies, Clerk.

Heretofore to-wit on September 20, 1912, the subpœna in Chancery also issued in said cause and is in words and figures as follows, to-wit: Same as foregoing Subpœna but following endorsed thereon.
Endorsement: I hereby certify that the within — of the writ sued out of the court of the proper District. J. W. Menzies, Clerk, by Chas. N. Wiard, D. C.

41 Marshal's return on the foregoing Subpœna in Chancery is in words and figures as follows, to-wit:
Received 4 copies of the within Spa. In Chancery at Louisville, Ky., Sept. 21, 1912, and executed same on the within named Pres. S. Ray at Louisville, Ky., Sept. 21, 1912, on W. H. Hager, at Brandenburg, Ky., Frank G. Corley, at Elizabethtown, Ky., and W. A. Robinson at Hodgenville, Ky., Sept. 23, 1912.

G. W. LONG,
U. S. Marshal.
By LOUIS RYANS,
Office Deputy.

Received 9 copies of the within Spa. in chancery at Owensboro, Ky., Sept. 23, 1912, and executed same on the within named C. E. Sugg, at Henderson, Ky., John Bingham, at Morganfield, Ky., W. B. Harvey, at Dixon, Ky., Sept. 23, 1912; Sept. 25, 1912, on W. T. Mills and R. B. Bradley, at Madisonville, Ky., and H. L. Kirkpatrick, at Greenville, Ky.; Sept. 26, 1912, on E. S. Tinsley, at Hartford, Ky., and J. M. Moorman, at Leitchfield, Ky.; Sept. 27, 1912, on E. P. Taylor at Owensboro, Ky.

G. W. LONG,
U. S. Marshal,
By C. T. NICHOLS, *D. M.*

Received 17 copies of the within Spa. in Chancery at Paducah, Ky., Sept. 25, 1912, and executed same on the within named J. W. Monroe and Lee Mason, at Mayfield, Ky., Will Nailer, at Fulton, Ky., S. T. Roper, at Fulton, Ky., T. J. Neely, at Wickliffe, Ky., Sept. 25, 1912; R. O. Willingham, at Bardwell, Ky., G. G. Singleton and T. N. Hazelip, at Paducah, Ky., Sept. 26, 1912; U. S. King, at Eddyville, Ky., W. L. Davis, at Cadiz, Ky., R. T. Stowe, at Hopkinsville, Ky., Sept. 27, 1912; M. P. Smith, at Princeton, Ky., J. D. Hall, at Benton, Ky., W. A. Barkley, at Paducah, Ky., L. E. Guess, at Marion, Ky., Sept. 28, 1912; on the within named D. S. Webb, at Smithland, Ky., Oct. 2, 1912, and J. A. Porter, at Clinton, Ky., by their written acceptance of service.

This Oct. 5, 1912.

G. W. LONG,
U. S. Marshal,
By ELWOOD NEEL, *D. M.*

Clerk's endorsement on the foregoing Subpœna in Chancery is in words and figures as follows, to-wit:

Returned and filed October 22, 1912. J. W. Menzies, Clerk.

Heretofore to-wit on September 20, 1912 a restraining order was made and entered herein, same being in words and figures as follows, to-wit:

42 District Court of the United States for the Eastern District of Kentucky.

No. 731.

ILLINOIS CENTRAL RAILROAD COMPANY, Complainant,
versus
HENRY M. BOSWORTH et al., Defendants.

Restraining Order.

(Entered September 20, 1912.)

Complainant, upon filing its bill herein, moved the court to grant it an injunction pendente lite in accordance with the prayer in its bill and said motion is now fixed for hearing September 26, 1912, at 10 o'clock in the court room of this court in the city of Frankfort, State of Kentucky, and it having been made to appear by the averments of complainant's bill and the exhibits filed therewith, and affidavits likewise filed, that there is danger of irreparable loss to complainant before the hearing of said application for said injunction can be had unless defendants herein are, pending said hearing, enjoined and restrained as prayed in complainant's said bill;

43 It is therefore ordered that a temporary restraining order be, and it is granted and that the defendants, Bosworth, Rhea

and Crecelius, individually or acting as a Board of Valuation and Assessment of Kentucky, be enjoined and restrained from apportioning to any of the county clerks named in the caption of said bill, or to any other officer of the counties, cities, towns, or taxing districts in said counties of which said clerks or the county officers are officials, the so-called assessment mentioned in the bill or any part thereof for taxation or for extension of tax rates thereon; that said Bosworth individually or as Auditor of Public Accounts be enjoined and restrained from certifying to said county clerks or any of them or any other officer of the counties of which said defendants are the clerks, the aforesaid so-called final assessment; that the said defendants' county clerks mentioned in the bill of complainant and each of them be enjoined and restrained from certifying to the Sheriff or other tax collector for the counties, cities, towns, and taxing districts respectively in the county of which he is clerk, any of the apportionments heretofore or hereafter purported to be certified to them by the said Bosworth or the said Likens; that the counties aforesaid be enjoined and restrained from collecting or taking any steps to collect upon the amount or amounts certified to their county clerks respectively, and that the defendant Likens be likewise enjoined as is hereinbefore ordered with respect to the said Bosworth; that the defendant, Garnett, and defendants, Morris, Logan, Hogan, Franklin and Marshall, be enjoined and restrained from instituting any action or procuring any indictment, warrant, or other proceeding in court or at law to coerce the payment by complainant of any taxes upon the said assessment or any part thereof, whether acting on behalf of the Commonwealth or any county, city, town, or taxing district until the motion for an injunction pendente lite can be heard and determined by the court.

44 On the same day to-wit September 20, 1912 certified copies of the foregoing restraining order were made and delivered to the Marshals of the Eastern & Western Districts of Kentucky and were returned and filed on September 26, 1912, and October 22, 1912, with the following returns endorsed thereon, viz:

Received this Restraining Order at Frankfort, Ky. on Sept. 20, 1912 and executed same in full on Sept. 21, 1912, by delivering true copies to the following named persons at Frankfort, Ky.: Henry M. Bosworth, Thomas S. Rhea, Clark F. Crecelius, individually and as constituting the Board of Valuation and Assessment of the Commonwealth of Kentucky, Henry M. Bosworth as Auditor of Public Accounts of the Commonwealth of Kentucky; G. B. Lykins as Assistant Auditor of Public Accounts of the Commonwealth of Kentucky; James Garnett, individually, and as Attorney General of the Commonwealth of Kentucky; C. H. Morris, Individually, and as First Assistant Attorney General of the Commonwealth of Kentucky; M. M. Logan, individually, and as Second Assistant Attorney General of the Commonwealth of Kentucky; O. S. Hogan, individually, and as Third Assistant Attorney General of the Commonwealth of Kentucky; Robert B. Franklin, individually, and as Commonwealth's Attorney for the Fourteenth Judicial District, including Franklin

County, Kentucky; Wiley C. Marshall, individually and as County Attorney for Franklin County, Kentucky.

A. B. PATRICK, *U. S. M.*,
By N. I. McDANIEL, *D. M.*

Received the 4 copies of the within Restraining Order at Louisville, Ky., Sept. 21, 1912, and executed same on the within named Pres. S. Ray, at Louisville, Ky., Sept. 21, 1912, on W. H. Hager, at Brandenburg, Ky., Frank G. Corley at Elizabethtown, Ky., and W. A. Robinson, at Hodgenville, Ky., Sept. 23, 1912.

This Sept. 23, 1912.

G. W. LONG,
U. S. Marshal,
By LEWIS RYANS,
Office Deputy.

Received 9 copies of the within Restraining Order at Owensboro, Ky., Sept. 23, 1912, and executed same on the within named C. E. Sugg, at Henderson, Ky., John Bingham, at Morganfield, Ky., W. B. Harvey, at Dixon, Ky., Sept. 23, 1912; Sept. 25, 1912, on W. T. Mills and R. B. Bradley, at Madisonville, Ky., and H. L.
45 Kirkpatrick, at Greenville, Ky., Sept. 26, 1912, on E. S. Tinsley at Hartford, Ky., and J. M. Moorman, at Leitchfield, Ky.; Sept. 27, 1912, On E. P. Taylor at Owensboro, Ky.

This Sept. 27, 1912.

G. W. LONG,
U. S. Marshal,
By C. T. NICHOLS, *D. M.*

Received 17 copies of the within Restraining Order at Paducah, Ky., Sept. 25, 1912, and executed same on the within named J. W. Monroe and Lee Mason, at Mayfield, Ky., Will Nailer, at Fulton, Ky., S. T. Roper Fulton, Ky., T. J. Neeley, At Wickliffe, Ky., Sept. 25, 1912; R. O. Willingham, at Bardwell, Ky., G. C. Singleton and T. N. Hazelip, at Paducah, Ky., Sept. 26, 1912; U. S. King, at Eddyville, Ky., W. L. Davis, at Cadiz, Ky., R. T. Stowe, at Hopkinsville, Ky., Sept. 27, 1912; M. P. Smith, at Princeton, Ky., J. D. Hall, at Benton, W. A. Barkley, at Paducah, Ky., L. E. Guess at Marion, Ky., Sept. 28, 1912; on the within named D. S. Webb, at Smithland, Ky., Oct. 2, 1912, and Oct. 5, 1912, On J. A. Porter, at Clinton, Ky., by their written acceptance of service.

This Oct. 5, 1912.

G. W. LONG,
U. S. Marshal,
By ELWOOD NEEL, *D. M.*

46 Heretofore to-wit on September 20, 1912 the following affidavit of Charles H. Markham was filed herein, also the following affidavit of Martin P. Blauvelt, both being in support of application of restraining order and being in words and figures as follows, to-wit:

47 District Court of the United States, Eastern District of Kentucky.

No. 731.

ILLINOIS CENTRAL RAILROAD COMPANY, Complainant,
versus
HENRY M. BOSWORTH et al., Defendants.

Affidavit of Charles H. Markham in Support of Application for Restraining Order.

STATE OF ILLINOIS,
Cook County, ss:

Charles H. Markham, being first duly sworn, says that he is the president of complainant, Illinois Central Railroad Company, and that an emergency exists for the granting of a restraining order, without notice to defendants, to remain in force until the motion for a preliminary injunction can be heard, and that affiant has good reason to believe and does believe that if notice were given of the application for an injunction, the defendants would frustrate the injunction by hurriedly doing the acts which complainant in this suit seeks to enjoin, before the motion could be heard by the court, and that the mischief intended to be prevented by an injunction would be thereby accomplished and this suit become abortive; but that no injury could accrue to the defendants or Commonwealth of Kentucky or the counties, cities, towns or taxing districts mentioned in the bill of complaint, by the allowance of a restraining order to continue until the motion for an injunction can be heard.

C. H. MARKHAM.

Sworn to before me by C. H. Markham in Cook County, Illinois, this 17th day of September, 1912; my commission as notary public expires the 21st day of December, 1915.

M. J. O'CONNELL,
Notary Public.

29

48 District Court of the United States, Eastern District of Kentucky.

In Equity.

ILLINOIS CENTRAL RAILROAD COMPANY, Complainant,
vs.
HENRY M. BOSWORTH et al., Defendants.

STATE OF ILLINOIS,
County of Cook, ss:

Personally appeared before me a Notary Public in and for said County, Martin P. Blauvelt, who being duly sworn deposes and says, that he is the comptroller of the Illinois Central Railroad Company and the head of its Accounting Department; that by virtue of his office and authority he is familiar with the accounts and financial reports and data of the said Company; that he has caused to be made under his supervision and direction a report of the market value of the Capital Stock and Funded Debt of the Illinois Central Railroad System not held in the Treasury of the Company, such market value being based on the highest quotations on the New York Stock Exchange during the year ending June 30th, 1911, as reported by the Commercial and Financial Chronicle, a standard authority upon such quotations, and that the said market value was the sum of $306,934,100; that the said Company has just completed a valuation of the physical or tangible property of its system in the State of Iowa and a similar valuation in the State of Illinois, the same being done with the greatest care, and for the purpose of evidence in court, and that until these valuations had been made it was not possible to ascertain the value of the physical or tangible property of the entire system, excluding that within the State of Kentucky, and that by reason of the valuations just completed, it is made known that such value, excluding that within the State of Kentucky, was during the year ending June 30th, 1911, not less than $320,000,000.

Affiant further says that the assessed value of the tangible property of the said Company in Kentucky for the same period
49 was $12,377,383, and that the net income of the System operated by the said Illinois Central Railroad Company as an operating Company during the same period amounted to $15,757,767.55; and that the above net income capitalized at five per cent, amounts to $315,155,351; at six per cent it amounts to $262,629,459 and at seven per cent it amounts to $225,110,965.

Affiant further says that upon the basis of the sums shown in this affidavit the value of the tangible or physical property of the Illinois Central Railroad Company during the year ending June 30th, 1911, was in excess of the value of the said capital stock funded debt, and in excess of the capitalized net income of the system operated by the Illinois Central Railroad Company at the rates afore-

said and that there was no intangible value or franchise value over and above the value of the physical or tangible property of the Illinois Central Railroad Company.

MARTIN P. BLAUVELT.

Sworn to and subscribed before me and witness my hand and seal at my office in the City of Chicago, Cook County, Illinois, this Seventeenth day of September, 1912.

M. J. O'CONNELL,
Notary Public, Cook County, Illinois.

My Commission expires December 21, 1915.

50 On November 20, 1912, an order was made and entered herein as follows, to-wit:

#731.

ILLINOIS CENTRAL RAILROAD COMPANY
vs.
H. M. BOSWORTH et al.

On motion of the Complainant, leave is given to Complainant to amend its bill by interlineation upon the bill itself as follows, to-wit: By finishing the word "assum"—in line 9 page 10, by adding the syllable "ed," and by changing the word "the" immediately following the word "assum"—to the word "to" and by changing the word "eight" in the 11th line on the said 10th page to the word "eighty," so as to read assumed to equalize the amount thus obtained with other property in the State of Kentucky by taking eighty per cent thereof.

Came the parties to the above entitled cause by their attorneys. The defendants by their attorneys filed in the above entitled cause the affidavits of Henry M. Bosworth, Thos. S. Rheam, Carl F. Crecelius and Chas. J. Veling and also filed demurrer to the bill on the ground that if any cause of action is set up it is against the State of Kentucky and also demurrer to the whole bill.

The Complainant filed the affidavits of W. L. Tarbet, M. K. Barnum, Archibald S. Baldwin, Daniel J. Brumley, Arthur L. Davis, Martin P. Blauvelt and figures from U. S. Census 1900 and 1904 and affidavit of C. E. Rice.

Whereupon, by consent of parties, it is ordered that on pending motions for preliminary injunctions and the demurrers said case be heard.

Whereupon the motion and demurrers coming on to be heard was argued in part and there not being time to conclude the arguments to-day, further hearing herein is adjourned over until to-morrow morning at 9 o'clock.

51 Affidavit of Henry M. Bosworth filed herein on November 20, 1912, is as follows to-wit:

District Court of the United States for the Eastern District of Kentucky.

No. 731.

ILLINOIS CENTRAL RAILROAD COMPANY, Complainant,
versus
HENRY M. BOSWORTH, THOMAS S. RHEA, CARL F. CRECELIUS, Individually and as Constituting the Board of Valuation and Assessment of the Commonwealth of Kentucky, et al., Defendants.

Affidavit of Henry M. Bosworth.

The affiant, Henry M. Bosworth, says that by virtue of his office as Auditor of Public Accounts of the Commonwealth of Kentucky, he is now, and has been since the first Monday in January, 1912, a member of the State Board of Valuation and Assessment.

He says that the duties of said Board are fully defined and set out in the Kentucky Statutes, and that under the Statutes it is made the duty of said Board each year to ascertain and assess for taxation the franchise of various public service corporations doing business in the State of Kentucky, among which is complainant.

52 Affiant says that as required by law, said Board met for the year 1912, for the purpose of fixing a tentative or preliminary value upon the franchise of such corporations, and that the tentative assessment of the complainant's franchise in Kentucky was fixed at the value of $21,500,000, and that this value was arrived at from a consideration of the report made to the Auditor of Public Accounts by complainant, as required by the provisions of the Kentucky Statutes; that if the franchise of complainant for the years previous to 1912 was of the same value as the franchise for the year 1912, that in the honest judgment of the Board acting in 1912, the franchise had been greatly undervalued; that after the notice of the tentative assessment made by said Board had been given to complainant, that complainant appeared before the Board and protested against said assessment and introduced certain proof, all of which was heard and considered by the Board; that after a careful consideration of all the facts and of all the proof introduced by complainant before the Board, and all exhibits filed before the Board, the Board was of the opinion, in the exercise of an honest judgment, that the value of complainant's franchise in Kentucky for the year 1912 should be fixed at the sum of $14,746,857, and in the judgment of the Board the fair cash value of complainant's franchise in Kentucky for the year 1912, estimated at the price it would bring at a fair voluntary sale was not less than the sum aforesaid, at which it was fixed in the final assessment; that said assessment was not and is not exorbitant or extravagant, and was not made arbitrarily or

53 without reference to the real value of said franchise, and that the financial condition of the State of Kentucky had

no influence with the Board in arriving at the value of said franchise, and was not considered by the Board.

Affiant says that if it is true that the State of Kentucky is in financial straits, and stands in need of money, and that the Legislature at its session in 1912, made many and extravagant appropriations, making it necessary for the State to have an increased amount of money, that this fact, if it is a fact, was not considered by the Board in making the assessment of complainant's franchise for the year 1912, and was not considered by the Board, but that the Board had no purpose in mind at the time of making said assessment other than to reach a true and correct value of complainant's franchise, estimated at the price it would bring at a fair voluntary sale, and that the sum at which the value was fixed, in the judgment of the Board is not greater than the true cash value of said franchise, estimated at the price it would bring at a fair voluntary sale.

Affiant says that it is true that a public utilities bill was introduced before the Legislature at its session in 1912, and that same was defeated, but he says that this fact was not considered by the Board and had no influence with the Board in estimating the value of complainant's franchise for the year 1912, and affiant says that he did not, either publicly or privately make any statements or promises to any person or persons that he, or the Board, would increase the franchise of public service corporations in the
54 State of Kentucky including the complainant, to such an amount as would cause them to bear more than a just proportion of the burdens of taxation in Kentucky, and that in assessing the franchise of such corporation in Kentucky, including the complainant, the Board sought to the best of its skill and judgment to fix a fair valuation upon the franchise of each of said corporations, and to make each of them bear a just and fair proportion of the burdens of taxation, and no greater proportion than individual taxpayers and other corporations in the State of Kentucky, and that all of such public service corporations, including the complainant, were treated exactly alike in so far as it was possible so to do by the Board, and that if there is any discrimination between any of such corporations in estimating and fixing the value of the franchise, it was wholly unintentional on the part of the Board, and is not substantial.

Affiant says that in order that the Board might have facts and figures before it showing the value of complainant's franchise, as well as the franchise of other like corporations, it did employ John L. Rich to assist it in obtaining certain facts and figures, and to aid in making calculations; that the only assistance rendered by Justus Goebel was in assisting said Rich in obtaining certain facts and making certain calculations; that the work done by said Rich for the Board was done at the instance and the request of the Board, and under the direct supervision of the Board, and that all facts or figures or information submitted to the Board by the said

Rich or by the said Goebel, who was assisting said Rich as a
55 disinterested taxpayer of the State of Kentucky, were investigated personally by the Board, and not considered by the Board unless found by the Board personally to be correct; that the said Rich and the said Goebel, acting under the direction of the Board, and under its personal supervision, aided in figuring out the result of complainant's franchise in accordance with the directions given by the Board, and that in making said assessment of complainant's franchise the Board acted upon its own information ascertained by it to be correct, and the Board itself, and no other person or persons determined the value of complainant's franchise in Kentucky; that the authority to ascertain and fix the value of complainant's franchise was not delegated by the Board to said Goebel and Rich, and the ascertainment of the value of said franchise was not done largely or wholly by them, or by them at all, and that their recommendations were not adopted by the Board as its conclusions without proper consideration by the members of the Board as to the requirements of the law with respect to the elements lawfully to be considered in determining the valuation of said franchise for assessment in Kentucky.

Affiant says that the said Board in fixing the value of complainant's franchise for assessment for the year 1912, did not ignore the Statutes of Kentucky, in such cases made and provided, requiring them to fix the value of complainant's entire capital stock and to then deduct therefrom the value of complainant's total tangible property in the State of Kentucky, and to apportion the residue thus resulting according to mileage or the length of com-
56 plaint's railroad within the State of Kentucky as compared with its total mileage of rails in and outside of said State, but, on the other hand, affiant says that the Board sought to follow strictly the Statutes of Kentucky in such cases made and provided, and that in arriving at the value of complainant's franchise in Kentucky the said Board ascertained the total capital stock of complainant on both the stock and bond plan and by capitalizing the net income of complainant on a percentage of six per cent, and that after having done so, the Board took into consideration the length of lines owned, leased, operated or controlled in Kentucky, and owned, leased or controlled in Kentucky and elsewhere, and considered this fact in ascertaining the value of the capital stock that should be apportioned to Kentucky.

Affiant says that there was no discrimination between complainant and other corporations of the same class, or at all, in estimating the value of complainant's franchise, but that the Board sought to be just and fair to all of such corporations, and to assess them all upon the same basis, and that in making the assessment of complainant's franchise for the year 1912 that the Board did not in the case of other like corporations follow a method in estimating the value of the franchise that was more favorable to such other corporations than to complainant.

Affiant says that after notice of the tentative assessment had been given to complainant, that through its counsel it appeared and

filed as evidence before said Board a statement showing the method that complainant conceived to be a proper method for the
57 Board to follow in estimating the value of complainant's franchise for the year 1912, and said statement is filed herewith and made a part hereof marked "Exhibit No. 1," and that in addition complainant filed another statement, showing another method of ascertaining the value of complainant's franchise, and the value of complainant's property in Kentucky, which is also filed herewith and made a part hereof marked "Exhibit No. 2."

Affiant says that from the statement filed before the Board by the complainant it was shown that on the stock and bond plan the total capital stock of complainant was of the value of $330,139,534, and that it was admitted that the proportion of the lines owned, leased, operated and controlled in Kentucky bears to the total mileage of lines owned, leased and controlled in Kentucky and elsewhere the ratio of 12.3 per cent, and that upon this basis the value of the capital stock of complainant in Kentucky is $40,607,-164; that the tangible property assessed for taxation in Kentucky is $12,377,384, which, when deducted from the value of the capital stock in Kentucky, leaves a value of complainant's franchise in Kentucky on this basis of calculation and apportioned on strictly a mileage basis, of $28,229,780.

Affiant says that the Board also capitalized the net income of complainant for the year 1911, at six per cent on the basis of the net income shown in complainant's report to the Board, and that in this way the Board found the value of the total capital stock of complainant to be $239,717,400, and that on the basis of the
58 admitted ratio of 12.3 per cent the value of the capital stock of complainant in Kentucky for the year 1912, is $29,485,-240, and deducting the value of the tangible property in Kentucky, to-wit, $12,377,383, leaves the value of complainant's franchise on that basis of calculation $17,107,857.

Affiant says that the Board considered each of these methods, but did not apportion values absolutely on a mileage basis, but took into consideration the other evidence introduced before the Board showing that the value of complainant's property in Kentucky per mile was not as great as the value of complainant's property outside of Kentucky, and after a careful consideration of all these facts, the value of complainant's franchise was reduced to $14,746,857, which, in the judgment of the Board, was not more than the fair cash value of complainant's franchise estimated at the price it would bring at a fair voluntary sale.

HENRY M. BOSWORTH.

STATE OF KENTUCKY,
County of Franklin:

This day personally appeared before me, H. B. Ware, a notary public in and for Franklin County, Ky., Henry M. Bosworth, one of the defendants herein, who made oath that the statements in the foregoing affidavit are true.

Witness my hand this 18th day of November, 1912.

[SEAL.] H. B. WARE,
Notary Public in and for Franklin County, Kentucky.

(Filed November 20, 1912. J. W. Menzies, U. S. Clerk.)

59 Exhibit 1 filed with affidavit of Henry M. Bosworth is as follows, to-wit:

Form 1579.

Illinois Central Railroad, Central Mississippi Valley Route.

Illinois Central Railroad Company.

1912, Ky., Franchise Ass't on 564 Mi. R. R. Owned by C., St. L. & N. O. R. R. Co. Operated by I. C. R. R. Co. under Lease and Ky. Act.

Sec. 6052. "The Board shall fix the value of "Capital Stock" as provided in Sec. 6053, deduct Tangible Ass't. Remainder is Franchise Ass't.

Sec. 6053. For Foreign Corp. except R. R.—"The Board shall fix the Value of "Capital Stock" in Ky. by capitalizing Ky. Net, or find System Cap. St'k Val. (by capitalizing System Net) and pro rate same to Ky. on Gross Receipts basis; deduct Tangible Ass't.—Remainder is Franchise Ass't.

Sec. 6054. For Domestic or Foreign R. R.—"The Board shall fix the Value of "Capital Stock" as hereinbefore provided, and pro rate same to Ky. on Mileage Basis. Deduct Tang. Ass't.—Remainder is Franchise Ass't.

Meaning of "Capital Stock"—99 Ky. 623—76 Ills. 561—126 N. Y. 433 112 Fed. Rep. 611.

System Mileage 4563, Ky. Mileage 563—12.3%.
" Gross $60,977,031—Ky. Gross $7,622,738—12.4%.

System Net.

1907	$12,750,121
1908	12,742,868
1909	12,945,935
1910	12,004,674
1911	14,393,049
Av. .....5)	64,836,647
Cap. at .....6)	12,967,329
System Cap.	216,122,100
Ky. %	12.35%
Ky. Cap.	26,691,085
Equalize at	58.4%
	$15,587,594
Deduct Tang.	12,377,383
Franchise Ass't	3,210,211

Or $5,692 per mile.

System Assets as per Balance Sheet	$330,139,534.04
Deduct as Irrelevant to Ky. Mileage	112,043,198.78
	$218,096,335.26
Ky. %	12.3
	26,825,849
Equalize at	58.4%
	15,666,295
Deduct	12,377,383 Tang. Ass't
Remainder	3,288,912 Fran. Ass't

Exhibit 2 filed with the affidavit of Henry M. Bosworth is the same as Exhibit B filed with Bill of Complaint.

60 Affidavit of Thomas S. Rhea filed herein on November 20, 1912, is as follows to-wit:

61 District Court of the United States for the Eastern District of Kentucky.

No. 731.

ILLINOIS CENTRAL RAILROAD COMPANY, Complainant,
versus
HENRY M. BOSWORTH, THOMAS S. RHEA, CARL F. CRECELIUS, Individually and as Constituting the Board of Valuation and Assessment of the Commonwealth of Kentucky, et al., Defendants.

Affidavit of Thomas S. Rhea.

The affiant, Thomas S. Rhea, says that by virtue of his office as Treasurer of the Commonwealth of Kentucky, he is now and has been since the first Monday in January, 1912, a member of the State Board of Valuation and Assessment.

He says that the duties of said Board are fully defined and set out in the Kentucky Statutes, and that under the Statutes it is made the duty of said Board each year to ascertain and assess for taxation the franchise of various public service corporations doing business in the State of Kentucky, among which is complainant.

62 Affiant says that as required by law, said Board met for the year 1912, for the purpose of fixing a tentative or preliminary value upon the franchise of such corporations, and that the tentative assessment of the complainant's franchise in Kentucky was fixed at the value of $21,500,000, and that this value was arrived at from a consideration of the report made to the Auditor of Public Accounts by complainant, as required by the provisions of the Kentucky Statutes; that if the franchise of complainant for the years previous to 1912 was of the same value as the franchise for the year 1912, that in the honest judgment of the Board acting in 1912, the franchise had been greatly undervalued; that after the notice of the tentative assessment made by said Board had been given to complainant, that complainant appeared before the Board and protested against said assessment and introduced certain proof, all of which was heard and considered by the Board; that after a careful consideration of all the facts and of all the proof introduced by complainant before the Board, and all exhibits filed before the Board, the Board was of the opinion, in the exercise of an honest judgment, that the value of complainant's franchise in Kentucky for the year 1912 should be fixed at the sum of $14,746,857, and in the judgment of the Board the fair cash value of complainant's franchise in Kentucky for the year 1912, estimated at the price it would bring at a fair voluntary sale was not less than the sum aforesaid, at which it was fixed in the final assessment; that said assessment was not and is not exorbitant or extravagant, and was

63 not made arbitrarily or without reference to the real value of said franchise, and that the financial condition of the

State of Kentucky had no influence with the Board in arriving at the value of said franchise, and was not considered by the Board.

Affiant says that if it is true that the State of Kentucky is in financial straits, and stands in need of money, and that the Legislature at its session in 1912 made many and extravagant appropriations, making it necessary for the State to have an increased amount of money, that this fact, if it is a fact, was not considered by the Board in making the assessment of complainant's franchise for the year 1912, and was not considered by the Board, but that the Board had no purpose in mind at the time of making said assessment other than to reach a true and correct value of complainant's franchise, estimated at the price it would bring at a fair voluntary sale, and that the sum at which the value was fixed, in the judgment of the Board is not greater than the true cash value of said franchise, estimated at the price it would bring at a fair voluntary sale.

Affiant says that it is true that a public utilities' bill was introduced before the Legislature at its session in 1912, and that same was defeated, but he says that this fact was not considered by the Board and had no influence with the Board in estimating the value of complainant's franchise for the year 1912, and affiant says that he did not, either publicly or privately make any statements or promises to any person or persons that he, or the Board, would increase the franchise of public service corporations in the State
64 of Kentucky, including the complainant, to such an amount as would cause them to bear more than a just proportion of the burdens of taxation in Kentucky, and that in assessing the franchise of such corporations in Kentucky, including the complainant, the Board sought to the best of its skill and judgment to fix a fair valuation upon the franchise of each of said corporations, and to make each of them bear a just and fair proportion of the burdens of taxation, and no greater proportion than individual taxpayers and other corporations in the State of Kentucky, and that all of such public service corporations, including the complainant, were treated exactly alike in so far as it was possible so to do by the Board, and that if there is any discrimination between any of such corporations in estimating and fixing the value of the franchise, it was wholly unintentional on the part of the Board, and is not substantial.

Affiant says that in order that the Board might have facts and figures before it showing the value of complainant's franchise, as well as the franchise of other like corporations, it did employ John L. Rich to assist it in obtaining certain facts and figures, and to aid in making calculations; that the only assistance rendered by Justus Goebel was in assisting said Rich in obtaining certain facts and making certain calculations; that the work done by said Rich for the Board was done at the instance and the request of the Board, and under the direct supervision of the Board, and that all facts or figures or information submitted to the Board by the said Rich or by
65 the said Goebel, who was assisting said Rich as a disinterested taxpayer of the State of Kentucky, were investigated personally by the Board, and not considered by the Board unless found by the Board personally to be correct; that the said Rich and the said

Goebel, acting under the direction of the Board, and under its personal supervision, aided in figuring out the result of complainant's franchise in accordance with the directions given by the Board, and that in making said assessment of complainant's franchise, the Board acted upon its own information ascertained by it to be correct, and the Board itself, and no other person or persons determined the value of complainant's franchise in Kentucky; that the authority to ascertain and fix the value of complainant's franchise was not delegated by the Board to said Goebel and Rich, and the ascertainment of the value of said franchise was not done largely or wholly by them, or by them at all, and that their recommendations were not adopted by the Board as its conclusions without proper consideration by the members of the Board as to the requirements of the law with respect to the elements lawfully to be considered in determining the valuation of said franchise for assessment in Kentucky.

Affiant says that the said Board in fixing the value of complainant's franchise for assessment for the year 1912 did not ignore the Statute of Kentucky, in such cases made and provided, requiring them to fix the value of complainant's entire capital stock and to then deduct therefrom the value of complainant's total tangible property in the State of Kentucky, and to apportion the residue thus
66 resulting according to mileage or the length of complainant's railroad within the State of Kentucky as compared with its total mileage of rails in and outside of said State, but, on the other hand, affiant says that the Board sought to follow strictly the Statutes of Kentucky in such cases made and provided, and that in arriving at the value of complainant's franchise in Kentucky the said Board ascertained the total capital stock of complainant on both the stock and bond plan and by capitalizing the net income of complainant on a percentage of six per cent, and that after having done so, the Board took into consideration the length of lines owned, leased, operated or controlled in Kentucky, and owned, leased or controlled in Kentucky and elsewhere, and considered this fact in ascertaining the value of the capital stock that should be apportioned to Kentucky.

Affiant says that there was no discrimination between complainant and other corporations of the same class, or at all, in estimating the value of complainant's franchise, but that the Board sought to be just and fair to all of such corporations, and to assess them all upon the same basis, and that in making the assessment of complainant's franchise for the year 1912, that the Board did not in the case of other like corporations follow a method in estimating the value of the franchise that was more favorable to such other corporations than to complainant.

Affiant says that after notice of the tentative assessment had been given to complainant, that through its counsel it appeared and
67 filed as evidence before said Board a statement showing the method that complainant conceived to be a proper method for the Board to follow in estimating the value of complainant's franchise for the year 1912, and said statement is filed with affidavit of Henry M. Bosworth herein and is referred to and made a part hereof marked "Exhibit No. 1," and that in addition complainant filed

another statement, showing another method of ascertaining the value of complainant's franchise, and the value of complainant's property in Kentucky, which is also filed with the affidavit of Henry M. Bosworth herein and is referred to and made a part hereof marked "Exhibit No. 2."

Affiant says that from the statement filed before the Board by the complainant it was shown that on the stock and bond plan the total capital stock of complainant was of the value of $330,139,534, and that it was admitted that the proportion of the lines owned, leased, operated and controlled in Kentucky bears to the total mileage of lines owned, leased and controlled in Kentucky and elsewhere the ratio of 12.3 per cent, and that upon this basis the value of the capital stock of complainant in Kentucky is $40,607,164; that the tangible property assessed for taxation in Kentucky is $12,377,384, which, when deducted from the value of the capital stock in Kentucky, leaves a value of complainant's franchise in Kentucky on this basis of calculation and apportioned on strictly a mileage basis of $28,229,780.

Affiant says that the Board also capitalized the net income of complainant for the year 1911 at six per cent on the basis of the
68 net income shown in complainant's report to the Board, and that in this way the Board found the value of the total capital stock of complainant to be $239,717,400, and that on the basis of the admitted ratio of 12.3 per cent the value of the capital stock of complainant in Kentucky for the year 1912 is $29,485,240, and deducting the value of the tangible property in Kentucky, to-wit, $12,377,383, leaves the value of complainant's franchise on that basis of calculation $17,107,857.

Affiant says that the Board considered each of these methods, but did not apportion values absolutely on a mileage basis, but took into consideration the other evidence introduced before the Board showing that the value of complainant's property in Kentucky per mile was not as great as the value of complainant's property outside of Kentucky, and after a careful consideration of all these facts, the value of complainant's franchise was reduced to $14,746,857, which in the judgment of the Board, was not more than the fair cash value of complainant's franchise estimated at the price it would bring at a fair voluntary sale.

THOMAS S. RHEA.

STATE OF KENTUCKY,
County of Franklin:

This day personally appeared before me, H. B. Ware, a Notary Public in and for Franklin County, Kentucky, Thomas S. Rhea, one of the defendants herein, who made oath that the statements in the foregoing affidavit are true.
69 Witness my hand this 19th day of November, 1912.

[SEAL.] H. B. WARE,
Notary Public in and for Franklin County, Kentucky.

My Commission expires January 15, 1916.

(Filed November 20, 1912, J. W. Menzies, U. S. Clerk.)

70 Affidavit of Carl F. Crecelius filed herein on November 20, 1912 is as follows, to-wit:

District Court of the United States for the Eastern District of Kentucky.

No. 731.

ILLINOIS CENTRAL RAILROAD COMPANY, Complainant,
versus
HENRY M. BOSWORTH, THOMAS S. RHEA, CARL F. CRECELIUS, Individually and as Constituting the Board of Valuation and Assessment of the Commonwealth of Kentucky, et al., Defendants.

Affidavit of Carl F. Crecelius.

The affiant, Carl F. Crecelius, says that by virtue of his office as Secretary of State of the Commonwealth of Kentucky, he is now and has been since the first Monday in January, 1912, a member of the State Board of Valuation and Assessment.

He says that the duties of said Board are fully defined and set out in the Kentucky Statutes, and that under the Statutes it is made the duy of said Board each year to ascertain and assess for taxation the franchise- of various public service corporations doing business in the State of Kentucky, among which is complainant.

71 Affiant says that as required by law, said Board met for the year 1912, for the purpose of fixing a tentative or preliminary value upon the franchise- of such corporations, and that the tentative assessment of the complainant's franchise in Kentucky was fixed at the value of $21,500,000, and that this value was arrived at from a consideration of the report made to the Auditor of Public Accounts by complainant, as required by the provisions of the Kentucky Statutes; that if the franchise of complainant for the years previous to 1912 was of the same value as the franchise for the year 1912, that in the honest judgment of the Board acting in 1912, the franchise had been greatly undervalued; that after the notice of the tentative assessment made by said Board had been given to complainant, that complainant appeared before the Board and protested against said assessment and introduced certain proof, all of which was heard and considered by the Board; that after a careful consideration of all the facts and of all the proof introduced by complainant before the Board, and all exhibits filed before the board, the Board was of the opinion, in the exercise of an honest judgment, that the value of complainant's franchise in Kentucky for the year 1912 should be fixed at the sum of $14,746,857, and in the judgment of the Board the fair cash value of complainant's franchise in Kentucky for the year 1912, estimated at the price it would bring at a fair voluntary sale was not less than the sum aforesaid, at which it was fixed in the final assessment; that said assessment was

not and is not exorbitant or extravagent, and was not made
72 arbitrarily or without reference to the real value of said franchise, and that the financial condition of the State of Kentucky had no influence with the Board in arriving at the value of said franchise, and was not considered by the Board.

Affiant says that if it is true that the State of Kentucky is in financial straits, and stands in need of money, and that the Legislature at its session in 1912 made many and extravagant appropriations, making it necessary for the State to have an increased amount of money, that this fact, if it is a fact, was not considered by the Board in making the assessment of complainant's franchise for the year 1912, and was not considered by the Board, but that the Board had no purpose in mind at the time of making said assessment other than to reach a true and correct value of complainant's franchise, estimated at the price it would bring at a fair voluntary sale, and that the sum at which the value was fixed, in the judgment of the Board is not greater than the true cash value of said franchise, estimated at the price it would bring at a fair voluntary sale.

Affiant says that it is true that a public utilities bill was introduced before the Legislature at its session in 1912, and that same was defeated, but he says that this fact was not considered by the Board and had no influence with the Board in estimating the value of complainant's franchise for the year 1912, and affiant says that he did not, either publicly or privately make any statements or promises to any person or persons that he, or the Board, would increase the franchise of public service corporations in the State of Kentucky,
73 including the complainant, to such an amount as would cause them to bear more than a just proportion of the burdens of taxation in Kentucky, and that in assessing the franchise of such corporations in Kentucky, including the complainant, the Board sought to the best of its skill and judgment to fix a fair valuation upon the franchise of each of said corporations, and to make each of them bear a just and fair proportion of the burdens of taxation, and no greater proportion than individual taxpayers and other corporations in the State of Kentucky, and that all of such public service corporations, including the complainant, were treated exactly alike in so far as it was possible so to do by the Board, and that if there is any discrimination between any of such corporations in estimating and fixing the value of the franchise, it was wholly unintentional on the part of the Board, and is not substantial.

Affiant says that in order that the Board might have facts and figures before it showing the value of complainant's franchise, as well as the franchise of other like corporations, it did employ John L. Rich to assist it in obtaining certain facts and figures, and to aid in making calculations; that the only assistance rendered by Justus Goebel was in assisting said Rich in obtaining certain facts and making certain calculations; that the work done by said Rich for the Board was done at the instance and the request of the Board, and under the direct supervision of the Board, and that all facts or figures or information submitted to the Board by the said Rich or by
74 the said Goebel, who was assisting said Rich as a disinterested taxpayer of the State of Kentucky, were investigated person-

ally by the Board, and not considered by the Board unless found by the Board personally to be correct; that the said Rich and the said Goebel, acting under the direction of the Board, and under its personal supervision, aided in figuring out the result of complainant's franchise in accordance with the directions given by the Board, and that in making said assessment of complainant's franchise, the Board acted upon its own information ascertained by it to be correct, and the Board itself, and no other person or persons determined the value of complainant's franchise in Kentucky; that the authority to ascertain and fix the value of complainant's franchise was not delegated by the Board to said Goebel and Rich, and the ascertainment of the value of said franchise was not done largely or wholly by them, or by them at all, and that their recommendations were not adopted by the Board as its conclusions without proper consideration by the members of the Board as to the requirements of the law with respect to the elements lawfully to be considered in determining the valuation of said franchise for assessment in Kentucky.

Affiant says that the said Board in fixing the value of complainant's franchise for assessment for the year 1912 did not ignore the Statutes of Kentucky, in such cases made and provided, requiring them to fix the value of complainant's entire capital stock and to then deduct therefrom the value of complainant's total tangible property in the State of Kentucky, and to apportion the residue
75 thus resulting according to mileage or the length of complainant's railroad within the State of Kentucky as compared with its total mileage of rails in and outside of said State, but, on the other hand, affiant says that the Board sought to follow strictly the Statutes of Kentucky in such cases made and provided, and that in arriving at the value of complainant's franchise in Kentucky the said Board ascertained the total capital stock of complainant on both the stock and bond plan and by capitalizing the net income of complainant on a percentage of six per cent, and that after having done so, the Board took into consideration the length of lines owned, leased, operated or controlled in Kentucky, and owned, leased or controlled in Kentucky and elsewhere, and considered this fact in ascertaining the value of the capital stock that should be apportioned to Kentucky.

Affiant says that there was no discrimination between complainant and other corporations of the same class, or at all, in estimating the value of complainant's franchise, but that the Board sought to be just and fair to all of such corporations, and to assess them all upon the same basis, and that in making the assessment of complainant's franchise for the year 1912 that the Board did not in the case of other like corporations follow a method in estimating the value of the franchise that was more favorable to such other corporations than to complainant.

Affiant says that after notice of the tentative assessment had been given to complainant, that through its counsel it appeared and filed as evidence before said Board a statement showing the method
76 that complainant conceived to be a proper method for the Board to follow in estimating the value of complainant's franchise for the year 1912, and said statement is filed with the affidavit

of Henry M. Bosworth herein and is referred to and made a part hereof marked "Exhibit No. 1," and that in addition complainant filed another statement, showing another method of ascertaining the value of complainant's franchise, and the value of complainant's property in Kentucky, which is also filed with the affidavit of Henry M. Bosworth herein and is referred to and made a part hereof marked "Exhibit No. 2."

Affiant says that from the statement filed before the Board by the complainant it was shown that on the stock and bond plan the total capital stock of complainant was of the value of $330,139,534, and that it was admitted that the proportion of the lines owned, leased, operated and controlled in Kentucky bears to the total mileage of lines owned, leased and controlled in Kentucky and elsewhere the ratio of 12.3 per cent and that upon this basis the value of the capital stock of complainant in Kentucky is $40,607,164; that the tangible property assessed for taxation in Kentucky is $12,377,384, which, when deducted from the value of the capital stock in Kentucky, leaves a value of complainant's franchise in Kentucky on this basis of calculation and apportioned on strictly a mileage basis of $28,229,780.

Affiant says that the Board also capitalized the net income of complainant for the year 1911 at six per cent on the basis of the
77 net income shown in complainant's report to the Board, and that in this way the Board found the value of the total capital stock of complainant to be $239,717,400, and that on the basis of the admitted ratio of 12.3 per cent, the value of the capital stock of complainant in Kentucky for the year 1912 is $29,485,240, and deducting the value of the tangible property in Kentucky, to-wit, $12,377,383, leaves the value of complainant's franchise on that basis of calculation $17,107,857.

Affiant says that the Board considered each of these methods, but did not apportion values absolutely on a mileage basis, but took into consideration the other evidence introduced before the Board showing that the value of complainant's property in Kentucky per mile was not as great as the value of complainant's property outside of Kentucky, and after a careful consideration of all these facts, the value of complainant's franchise was reduced to $14,746,857 which, in the judgment of the Board, was not more than the fair cash value of complainant's franchise estimated at the price it would bring at a fair voluntary sale.

CARL F. CRECELIUS.

STATE OF KENTUCKY,
County of Franklin:

This day personally appeared before me, H. B. Ware, a Notary Public in and for Franklin County, Kentucky, Carl F. Crecelius, one of the defendants herein, who made oath that the statements in the foregoing affidavit are true.

78 Witness my hand this 18th day of November, 1912.

[SEAL.] H. B. WARE,
Notary Public in and for Franklin County, Kentucky.

My commission expires January 15, 1916.

(Filed November 20, 1912, J. W. Menzies, U. S. Clerk, by C. N. Wiard, D. C.

79 Affidavit of Chas. J. Veling filed herein on November 20, 1912, is as follows, to-wit:

United States District Court for the Eastern District of Kentucky.

No. 731.

ILLINOIS CENTRAL RAILROAD COMPANY, Complainant,
vs.
H. M. BOSWORTH, THOMAS RHEA and C. F. CRECELIUS, Constituting the Board of Valuation and Assessment for the Commonwealth of Kentucky, Defendants.

Affidavit of Chas. J. Veling.

The affiant, Chas. J. Veling, says that for the year 1912 he acted as Secretary of the State Board of Valuation and Assessment, and that he acted as secretary of said Board at the time the assessment herein complained of was made; that under the supervision and directions of said Board he aided in figuring out the value of the franchise of complainant, based upon the facts before the Board, and that this work was done by him under the immediate directions and supervision of the Board.

Affiant says that he was present when said Board had under consideration the question of fixing the value of complainant's franchise in Kentucky for the year 1912, and he knows that said
80 Board gave full and careful consideration to all evidence before it and that from the discussions of the Board among themselves, that he knows that the Board in assessing complainant's franchise for the year 1912, attempted, to the best of their skill and judgment, to follow the statutes of Kentucky in making said assessment, and that from the discussions among the members of the Board while considering the question of said assessment, that the said Board sought, to the best of their judgment, to avoid any discrimination either in favor or against complainant, and that from the statements of the members of said Board while considering the question of complainant's franchise for the year 1912, he knows that it was not the intention of said Board to impose any greater burden of taxation upon complainant than a fair and just proportion, when compared to the proportion of the burdens of taxation born by other classes of property in the State of Kentucky.

Affiant says that he examined the evidence before the Board which was considered by the Board in arriving at the value of complainant's franchise for the year 1912, and that he heard the protest made by complainant against the assessment and some of the arguments offered in support of said protest, and that he gave careful consideration to the provisions of the Kentucky Statutes governing the assessment of complainant's franchise, and that after a careful considera-

tion of all these things, it is the opinion of the affiant that the assessment of complainant's franchise for the year 1912 is fair and
81 just and not more than the fair cash value of said franchise, estimated at the price it would bring at a fair voluntary sale, and that under said assessment complainant is not required to pay more than a just proportion of taxes, based upon the assessment of the property of other corporations and individuals in the State.

Affiant says that as Secretary of the Board he was required to keep correctly the proceedings of said Board, and that he did keep a correct record of the transactions of said Board; that he correctly and truly entered the judgment or findings of the Board, fixing the value of complainant's franchise for the year 1912, and that said judgment or findings embodies the acts of the Board in making said assessment, and said entry is in all respects true. A copy of the judgment or finding fixing the value of complainant's franchise for the year 1912 is filed herewith and made a part of this affidavit, and for identification is marked "Judgment."

CHAS. J. VELING.

November 18, 1912.

STATE OF KENTUCKY,
County of Franklin, sct:

This day personally appeared before me, a Notary Public in and for the county and State aforesaid, Chas. J. Veling, who made oath that the statements in the foregoing affidavit are true.

My commission expires January 15, 1916.

[SEAL.]

H. B. WARE,
Notary Public, Franklin County, Kentucky.

82 (Filed November 20, 1912, J. W. Menzies, U. S. Clerk.)
By C. N. WIARD, *D. C.*

It is resolved by the Board of Valuation and Assessment of Kentucky, after having given full and due consideration to the returns to the Auditor made by the Illinois Central Railroad Company, a corporation, and having taken into consideration the gross and net earnings of said Company in Kentucky and elsewhere, and, having considered the proportion the length of the lines owned, operated, leased, or controlled, by said company in Kentucky, bears to the total length of the lines owned, operated, leased, or controlled in this State and elsewhere; and, having considered the value of its shares and the market value thereof, and the amount of its bonded debt; and, having heard and considered all before the Board, including the evidence of the witnesses introduced by the Company and the exhibits filed therewith; and, after having heard and considered the arguments of counsel for the Company, and after said Board ascertained the value of the capital stock of said Company in Kentucky and from the amount thus found did deduct the assessed value of all tangible property assessed in the State of Kentucky, it is the judgment of said Board, all the members thereof concurring therein, that the taxable value of the franchise of said Company,

exercised in Kentucky, as so determined, is $14,746,857.00
83 Dollars, and the Board does hereby ascertain and fix the value thereof at said sum or amount for the purpose of taxation and assessment in Kentucky for the year of 1912.

August 31, 1912.

The foregoing resolution was offered by H. M. Bosworth, was seconded by Thos. S. Rhea. Upon call of the roll of the members on the resolution—Bosworth voted yes; Crecelius voted yes; Rhea voted yes.

The Chairman declared the resolution carried, and ordered that same be recorded.

Attest:

CHAS. J. VELING, *Secretary.*

(Filed November 20, 1912, J. W. Menzies, U. S. Clerk.)
By C. N. WIARD, *D. C.*

84 Said demurrer to Bill on the ground that if any cause of action is set up is against the State of Kentucky is as follows, same being filed on November 20, 1912, to-wit:

United States District Court for the Eastern District of Kentucky.

No. 731.

ILLINOIS CENTRAL RAILROAD COMPANY, Complainant,
versus
H. M. BOSWORTH, Auditor, et al., Defendants.

Demurrer to the Bill on the Ground That If Any Cause of Action Is Set Up It Is Against the State of Kentucky.

The joint and several demurrer of H. M. Bosworth, Auditor, Thomas Rhea, Treasurer, C. F. Crecelius, Secretary of State, individually, and as constituting the State Board of Valuation and Assessment, above-named defendants to the bill of complaint as amended of the Illinois Central Railroad Company, the above-named complainant.

These defendants, respectively, by protestation not confessing or acknowledging all or any of the matters and things in said complainant's bill to be true, in such manner and form as the same are therein set forth and alleged, do demur thereto, and for cause of demurrer show:

85 1. So much of said bill as seeks to enjoin the collection of the taxes due the State of Kentucky is a suit against the State of Kentucky in violation of the Eleventh Amendment to the Constitution of the United States.

2. So much of said bill as seeks to enjoin the Auditor of Public Accounts from certifying said assessment to the county clerks is

in effect a suit against the State, and in violation of the Eleventh Amendment of the Constitution of the United States.

Wherefore the defendants respectively demand the judgment of this Honorable Court whether they shall be compelled to make any further or another answer to the said bill, or any of the matters and things therein contained, and pray to be hence dismissed with the reasonable costs in this behalf sustained.

JAMES GARNETT,
Attorney General.

Henry M. Bosworth makes solemn oath and says that he is one of the above-named defendants, and that he is Chairman of the Board of Valuation and Assessment of Kentucky, and that the foregoing demurrer is not interposed for delay.

HENRY M. BOSWORTH.

Subscribed and sworn to before me by Henry M. Bosworth, this 19th day of November, 1912.

[SEAL.] H. B. WARE,
Notary Public in and for Franklin County, Kentucky.

My Commission expires January 15, 1916.

I hereby certify that in my opinion the foregoing demurrer is well founded in point of law.

JAMES GARNETT,
Attorney for Defendants.

Filed November 20, 1912. J. W. Menzies, U. S. Clerk.

86 Said demurrer to the whole bill filed November 20, 1912 is as follows, to-wit:

United States District Court for the Eastern District of Kentucky.

No. 731.

ILLINOIS CENTRAL RAILROAD COMPANY, Complainant,
versus
H. M. BOSWORTH, Auditor of the Commonwealth of Kentucky; Thomas S. Rhea, Treasurer of the Commonwealth of Kentucky, and C. F. Crecelius, Secretary of State of the Commonwealth of Kentucky, Individually and as Constituting the Board of Valuation and Assessment of the Commonwealth of Kentucky; G. B. Likens, Assistant Auditor of Public Accounts of the State of Kentucky; James Garnett, Attorney General of the State of Kentucky; C. M. Morris, First Assistant Attorney General of the State of Kentucky; M. M. Logan, Second Assistant Attorney General of the State of Kentucky; O. S. Hogan, Third Assistant Attorney General of the State of Kentucky; Robert B. Franklin, Commonwealth Attorney of the Franklin Circuit Court, and W. C. Marshall, County Attorney of Franklin County of the State of Kentucky.

Demurrer to the Whole Bill.

87 The joint and several demurrer of H. M Bosworth, Auditor of the Commonwealth of Kentucky, Thomas S. Rhea, Treasurer of the Commonwealth of Kentucky and C. F. Crecelius, Secretary of State of the Commonwealth of Kentucky, individually, and as constituting the Board of Valuation and Assessment for the Commonwealth of Kentucky, C. B. Likens, Assistant Auditor of Public Accounts of the State of Kentucky, James Garnett, Attorney General of the State of Kentucky, C. H. Morris, First Assistant Attorney General of the State of Kentucky, M. M. Logan, Second Assistant Attorney General of the State of Kentucky, O. S. Hogan, Third Assistant Attorney General of the State of Kentucky, Robert B. Franklin, Commonwealth Attorney of the Franklin Circuit Court, and W. C. Marshall, County Attorney of Franklin County of the State of Kentucky, above-named defendants to the bill of complaint of the Illinois Central Railroad Company, the above-named complainant.

These defendants, respectively, by protestation not confessing or acknowledging all or any of the matters and things in said complainant's bill to be true, in such manner and form as the same are therein set forth and alleged, do demur thereto, and for cause of demurrer show:

1. That this court has no jurisdiction of this action because it does not affirmatively appear in the bill of complaint that a Federal question is involved of which this court has jurisdiction; that the bill of complaint shows on its face that the questions therein raised are questions of which the State courts of the State of Kentucky have exclusive original jurisdiction.

88 2. That this is an action against the Commonwealth of Kentucky without the consent of said Commonwealth of Kentucky, in violation of the Eleventh Amendment to the Constitution of the United States.

3. That said bill of complaint of the complainant is wholly without equity.

4. That it appears by said bill that same is exhibited by the said complainant against these defendants for several distinct matters and causes, and the said bill is multifarious.

5. The facts essential to complainant's rights and within its own knowledge, and the knowledge of its officers and attorneys, are not alleged positively.

6. That the bill is deficient in certainty.

7. That the complainant does not offer to do equity.

8. The complainant does not state facts sufficient to show that it is entitled to the relief prayed for or any part thereof.

Wherefore the defendants respectively demand the judgment of this Honorable Court whether they shall be compelled to make any further or another answer to the said bill, or any of the matters and things there contained, and pray to be hence dismissed with the reasonable costs in this behalf sustained.

JAMES GARNETT,
Attorney General.

89 Henry M. Bosworth makes solemn oath and says that he is one of the above-named defendants, and that he is Chairman of the Board of Valuation and Assessment of Kentucky, and that the foregoing demurrer is not interposed for delay.

HENRY M. BOSWORTH.

Subscribed and sworn to before me by Henry M. Bosworth, this 18th day of November, 1912.

[SEAL.]

H. B. WARE,
Notary Public in and for
Franklin County, Kentucky.

My Commission expires January 15, 1916.

I hereby certify that in my opinion the foregoing demurrer is well founded in point of law.

JAMES GARNETT.
Attorney for Defendants.

Filed November 20, 1912, J. W. Menzies, U. S. Clerk. A Copy.

90 Said affidavits filed by order of Court on November 20, 1912 of W. L. Tarbet, M. K. Barnum, A. S. Baldwin, D. J. Brumley, A. L. Davis, M. P. Blauvelt, and C. E. Rice and figures from U. S. Census 1900 and 1904 are as follows, to-wit:

STATE OF ILLINOIS,
County of Cook, ss:

Personally appeared before me, a Notary Public, in and for said State and county, W. L. Tarbet, to me personally known to be the Land and Tax Commissioner of the Illinois Central Railroad Company, who, being duly sworn, deposes and says:

That he resides at 6132 Monroe Avenue, Chicago, Illinois; that he is the Land and Tax Commissioner of the Illinois Central Railroad Company and the head of its Tax Department; that by virtue of his office and authority he is familiar with assessments made against said Illinois Central Railroad Company, and that in the performance of his official duties he has superintendence and supervision over the payment of taxes and assessments by the Illinois Central Rail-
91 road Company over its entire system, including the payment of taxes and assessments against the Illinois Central Railroad Company in the State of Kentucky.

Affiant further says that on or about September 9, 1912, Henry M. Bosworth, Auditor of Public Accounts of the Commonwealth of Kentucky, informed him at Frankfort, Kentucky, that John L. Rich, who investigated on behalf of and at the request of the Members of the State Board of Valuation and Assessment of Kentucky the value of the Illinois Central Railroad Company's franchise assessable in Kentucky, and who made up and reported to the said Board his recommendations with respect to the value of the Illinois Central Railroad Company's franchise assessable in Kentucky, could tell W. L. Tarbet, the said affiant, how the value of the Illinois Central Railroad Company's franchise assessable in Kentucky was arrived at and determined; that said John L. Rich on said day in Covington, Kentucky, told W. L. Tarbet, the affiant, that said value of the Illinois Central Railroad Company's franchise assessable in Kentucky was found by averaging the operating income of said company in Kentucky for the years ending June 30, 1910, and June 30, 1911, capitalizing the average thereby arrived at at six per cent, equalizing said capitalization at eighty per cent, and deducting from the result thereof the "tangible assessment" on the railroad leased by the Illinois Central Railroad Company in Kentucky made by the Railroad Commission of Kentucky.

Affiant further says that the value of the franchise of the
92 Illinois Central Railroad Company assessable in Kentucky as determined by the method above set forth as reported to affiant by the said John L. Rich is within nine ($9.00) dollars of the final value of the franchise of the Illinois Central Railroad Company assessable in Kentucky as determined by the Board of Valuation and Assessment of the Commonwealth of Kentucky, in accordance with notice received by the affiant from the said Henry M. Bosworth as Auditor of Public Accounts of the Commonwealth of Kentucky.

WM. L. TARBET.

Sworn to and subscribed before me in Chicago, Cook County, Illinois, this 21st day of September, A D. 1912, and I hereby certify

under my official seal that I am authorized under the laws of the State of Illinois to administer oaths.

ANDREW P. HUMBURG,
Notary Public, Cook County, Illinois.

93 Illinois Central Railroad Company.

Statement Showing Amount of Rolling Stock.

STATE OF ILLINOIS,
County of Cook, ss:

I, M. K. Barnum, being duly sworn depose and say that I am the General Superintendent of Motive Power of the Illinois Central Railroad Company and that in my office are kept the records of all the rolling stock of said company showing the cost, the extent of the deprecation and the value thereof and that I am a proper person to make this affidavit and that according to the said records the value of all of the rolling stock of the Illinois Central Railroad Company on June 30, 1911, located anywhere, was $38,256,118.00 and that the said valuation is true and correct according to the best of my knowledge and belief.

M. K. BARNUM,
Gen'l Supt. Motive Power.

STATE OF ILLINOIS,
County of Cook, ss:

This day personally appeared before the undersigned a Notary Public in and for the State and county aforesaid, M. K. Barnum, whose signature is attached thereto and made oath that the statements made in the foregoing affidavit are true to the best of his knowledge and belief.

Given under my hand this 18th day of November, 1912.

My commission expires September 25, 1913.

[SEAL.] C. B. WINTERSMITH,
Notary Public.

(Filed November 20, 1912.)

J. W. MENZIES, *Clerk.*
By M. S. BARRETT, *D. C.*

94 STATE OF ILLINOIS,
County of Cook, ss:

Archibald S. Baldwin says that he is and for about 7½ years last past has been the chief engineer for complainant Illinois Central Railroad Company and that under his direction and with the co-operation of Daniel J. Brumley, engineer of construction, and Arthur L. Davis, office engineer, of the Illinois Central Railroad Company, affiant has made and caused to be made a valuation of the physical properties of complainant operated for railroad purposes, which valuation has only lately been completed, and that by computation which is accurate and reliable he has just ascertained that the value

of such physical railroads and other properties, exclusive of rolling stock, was, on June 30, 1911, $318,129,000.00.

ARCHIBALD S. BALDWIN.

STATE OF ILLINOIS,
County of Cook, ss:

This day personally appeared before the undersigned, a Notary Public in and for the State and county aforesaid, Archibald S. Baldwin, whose signature is attached hereto, and made oath that the statements made in the foregoing affidavit are true to the best of his knowledge and belief.

Given under my hand this 19th day of November, A. D. 1912.

[SEAL.] GLENN N. ANDREWS,
Notary Public.

My Commission expires August 14, 1913.

95 STATE OF ILLINOIS,
County of Cook, ss:

Daniel J. Brumley says that he is and for about eight years last past has been the engineer of construction for complainant Illinois Central Railroad Company and has made and caused to be made a valuation of the physical properties of complainant operated for railroad purposes, which valuation has only lately been completed, and that by computation which is accurate and reliable he has just ascertained that the value of such physical railroads and other properties, exclusive of rolling stock, was, on June 30, 1911, $318,129,000.00.

DANIEL J. BRUMLEY.

STATE OF ILLINOIS,
County of Cook, ss:

This day personally appeared before the undersigned, a Notary Public in and for the State and county aforesaid, Daniel J. Brumley, whose signature is attached hereto, and made oath that the statements made in the foregoing affidavit are true to the best of his knowledge and belief.

Given under my hand this 19th day of November, A. D. 1912.

[SEAL.] GLENN N. ANDREWS,
Notary Public.

My Commission expires August 14, 1913.

STATE OF ILLINOIS,
County of Cook, ss:

Arthur L. Davis says that he is and for about six years has
96 been an engineer in the service of the complainant Illinois Central Railroad Company and for the last year has been office engineer for the said company, and that in connection and in co-operation with Daniel J. Brumley, the engineer of construction for the said company, affiant has made and caused to be made a valuation of the physical properties of complainant operated for

railroad purposes, which valuation has only lately been completed, and that by computation which is accurate and reliable he has just ascertained that the value of such physical railroads and other properties, exclusive of rolling stock, was, on June 30, 1911, $318,129,000.00.

A. L. DAVIS.

STATE OF ILLINOIS,
County of Cook, ss:

This day personally appeared before the undersigned, a Notary Public in and for the State and county aforesaid, A. L. Davis whose signature is attached hereto, and made oath that the statements made in the foregoing affidavit are true to the best of his knowledge and belief.

Given under my hand this 19th day of November, A. D. 1912.

[SEAL.] GLENN N. ANDREWS,
Notary Public.

My Commission expires August 14, 1913.

97 STATE OF ILLINOIS,
County of Cook, ss:

I, Martin P. Blauvelt, being duly sworn depose and say, that I am and for 2½ years last past have been Comptroller of the complainant, Illinois Central Railroad Company; that the records of the Company showing the stocks, bonds and other property of the Company are, and have always been, kept in the office of said Comptroller, in the City of Chicago, Illinois, and that I have and have always had access thereto, and that as shown by the said records, the amounts of stocks, bonds, cash, notes, advances, and miscellaneous property not used for railroad purposes, and located outside the State and having their situs outside the State of Kentucky, were on June 30, 1911, as follows:

Cost or Book Value.

Stocks	$3,535,167 12
Bonds	32,716,309 45
Cash	15,022,416 22
Notes	445,223 89
Advances	1,972,970 00
Miscellaneous Properties	608,659 81
Total	$54,300,746 49

and that on June 30th, 1911, there were no stocks, bonds, notes or other intangible property in the State of Kentucky, or usable in said State in connection with the business or the transaction of the business of said complainant.

98 Affiant further deposes and says that the properties above enumerated are exclusive of the stocks and bonds covering the

physical railroads and properties operated by the Illinois Central Railroad Company at the time mentioned above.

MARTIN P. BLAUVELT.

STATE OF ILLINOIS,
County of Cook, ss:

This day personally appeared before the undersigned, a Notary Public in and for the State and county aforesaid, Martin P. Blauvelt, whose signature is attached thereto and made oath that the statements made in the foregoing affidavit are true to the best of his knowledge and belief.

Given under my hand this Nineteenth day of November, 1912.

M. J. O'CONNELL,
Notary Public.

99 STATE OF KENTUCKY,
County of Fulton, ss:

I, C. E. Rice, the *in*dersigned, being duly sworn, depose and say that I am a resident of Fulton, County, that my occupation is Cashier of City National Bank of Fulton, Ky., that I am familiar with the value of property in said County and also with the assessment of the same at the present time and for the past two years. I further depose and say that to the best of my knowledge and belief the aggregate assessment of realty in said County for the year 1911 or 1912 does not exceed 50% of the actual value of the aggregate taxable realty in said County, and that the aggregate assessment of personalty in said County does not exceed 25% of the aggregate actual value of taxable personality in said County.

C. E. RICE, [SEAL.]
Cashier City Nat'l Bank, Title.

Subscribed and sworn to before me this 18th day of November, 1912.

HERBERT CARR,
Notary Public.

100 *Figures from United States Census, 1900 and 1904, Volume on Wealth, Debt, & Taxation.*

Ratio of Assessment to Full Value in Kentucky.

	1900.	1904.	Pages.
Total Value All Property.	$1,365,130,718	$1,527,486,230	40-41
Less Property Exempt....	73,328,783	77,630,652	38-39
Total Value Taxable Property	1,291,801,935	1,449,855,578	
Assessed Value Taxable Property	650,661,431	700,881,240	40-41
Percent of Ass't to full Value	50 3/10%	48 3/10%	

101 On the day following to-wit on November 21, 1912, the following order was made herein, to-wit:

#731.

ILLINOIS CENTRAL RAILROAD COMPANY
vs.
H. M. BOSWORTH et al.

Came the respective parties in the above entitled cause pursuant to adjournment; whereupon further argument of the motion and demurrers therein was heard and there not being time to conclude the same to-day, the hearing is now and hereby adjourned over until to-morrow morning at 9 o'clock.

102 On the day following to-wit on November 22, 1912, the following order was made herein, to-wit:

#731.

ILLINOIS CENTRAL RAILROAD COMPANY
vs.
H. M. BOSWORTH et al.

In the above entitled case it is ordered that fifteen days' time from this date be given to the parties to file in the Clerk's Office of this Court additional affidavits and ten days after the expiration of that period to file counter affidavits to those theretofore filed; and by consent of parties it is ordered that on the pending motions for preliminary injunctions said cause be heard.

It is further ordered in said cause that it be submitted on the preliminary demurrer to the bill of Complaint and the motion for a preliminary injunction in accordance with the prayer of the bill and that the restraining order heretofore entered be continued in force until said motion for injunction be disposed of by the Court.

Upon motion of the defendants herein by counsel the restraining order heretofore granted by this court is modified to the extent that H. M. Bosworth, Auditor, is permitted to certify to the County Clerks of the various counties through which the lines of the complainant railroads run, the franchise value of the aforesaid corporations at the same value placed on said franchise for the year 1911 as admitted in the three various bill- of complaint, the same to be a partial certification.

The question of what amount of franchise valuation of the defendant, Illinois Central Railroad Company that may be certified by the Auditor to the various counties entitled to collect a tax on same, pending a decision of this Court on the motion for a preliminary injunction is set for hearing at Covington, Kentucky, on December 6, 1912, at 2 o'clock P. M.

On the motion for defendants the time for filing answers or other

pleadings in the above entitled case is hereby extended until the further order of the Court.

103 On the day following on December 6, 1912, the following order was made and entered herein, to-wit:

#731.

ILLINOIS CENTRAL RAILROAD COMPANY
vs.
H. M. BOSWORTH et al.

Came the parties by their respective attorneys and plaintiff by attorneys filed the affidavits of Martin P. Blauvelt and two affidavits of Daniel J. Bromley and by agreement of counsel it is ordered that this cause be continued until the final disposition of case- No. 729, 730, and 733 heretofore submitted.

104 Said affidavit of Martin P. Blauvelt and two affidavits of Daniel J. Bromley filed for order of Court on December 6, 1912, are as follows, to-wit:

United States District Court for the Eastern District of Kentucky.

No. 731.

ILLINOIS CENTRAL RAILROAD COMPANY, Complainant,
versus
H. M. BOSWORTH, THOMAS RHEA, and C. F. CRECELIUS, Constituting the Board of Valuation and Assessment for the Commonwealth of Kentucky, Defendants.

Affiant, Martin P. Blauvelt, says that he is and for about two and one-half years last past has been the Comptroller for complainant Illinois Central Railroad Company and that he is the chief accounting officer of the said company; that the general balance sheet contained in the annual report of the Illinois Central Railroad Company for the year ended June 30th, 1911, a copy of which is also contained in the report of the Illinois Central Railroad Company to the Auditor of Public Accounts of Kentucky June 30, 1911, while it is an index to the value of assets of the Company as of that date, it is such an index only if the items on both sides of the said balance sheet are taken together, and referring particularly to the said balance sheet he further says:

105 That included in the item "Investment to June 30, 1907" under the heading "Property Investment—Road and Equipment" $95,188,585.07 is the value of equipment owned by the Company and mortgaged to the extent of $28,000,000.00 on June 30, 1911, which liability is shown on the liabilities side of the balance sheet in the item "Bonded debt" under the heading "Mortgage, Bonded and Secured Debt" $187,351,000.00, and again,

inasmuch as the equipment certificates have never been sold and are included in the assets side of the balance sheet in the item "Securities issued or assumed—held in treasury" under the heading "Working Assets" $30,265,640.00. The same is true of the balance of the $30,265,640.00 in that the value of the property is shown in the "Property investment" accounts on the asset side of the balance sheet and again under the head of "Bonded debt" on the liabilities side. In this way it is obvious that unless the liabilities side of the account is taken into consideration, there is a duplication in the assets side of the account amounting to $30,265,640.00.

Affiant further says that out of the item of "Total property investment" $266,810,525.29 on the assets side of the account there should be also deducted for investments in companies operating independently the income from which is not included in the operating revenue of this Company such as,

The Yazoo & Mississippi Valley R. R. Co.
Indianapolis Southern R. R. Co.
Central of Georgia Railway Co.
Omaha Bridge & Terminal Railway Co.
Madison Coal Corporation.
Nashville Terminal Realty Co.

106 and other companies similarly situated amounting to not less than $52,488,629.26, none of which investments are taxable in the State of Kentucky.

Affiant further says that from the said assets should be deducted also the item of funds amounting to $12,950,319.65 on deposit with banks in the State of New York and in foreign countries, realized from the sale of securities as part of the item "Bonded debt" under the heading "Mort-age, bonded and secured debt" $187,351,000.00 which funds after June 30, 1911, were used to acquire securities of a company operated independently, to-wit: the Income Bonds of the Central of Georgia Railway Company.

Affiant further says there were other investments not connected with railroad operatings amounting to $751,720.82, such as real estate adjacent to the Tennessee Central Railroad for the most part situated in the city of Nashville, Tenn., real estate in Chicago and vicinity, and the like.

Affiant further says that there should be deducted from the said assets on account of accrued income on investments not due, $2,400,026.93, the investments being such as accrued interest not due on the Equipment Trust Certificates heretofore mentioned as part of the "Securities issued or assumed—held in treasury" and never in fact put upon the market, interest on deposit with banks and trust companies in New York and other similar interest accrued and not yet due on securities. By reference to the liabilities side of the balance sheet will be seen the item "Unmatured in-

107 terest, dividends and rents payable" under the heading "Accrued liabilities not due" $5,246,584.80, a large part of which represents the same things as the "Accrued income not due"—"Un-

matured interest, dividends and rents receivable" $2,400,026.93, above referred to.

Affiant further says that in addition there should be deducted from the amount of said assets as of June 30, 1911, liquidated liabilities representing unpaid vouchers and pay rolls, interest and the like, a sum in excess of $13,186,862.12 and that on account of the various items already mentioned in this affidavit the total amount of deduction from the said total assets would be in excess of the sum of $112,043,198.78 and that the amount of the grand total of assets as shown by the said balance sheet after making the deductions set out in this affidavit, would be less than the sum of $218,096,335.26.

MARTIN P. BLAUVELT.

STATE OF ILLINOIS,
County of Cook, ss:

This day personally appeared before the undersigned, a Notary Public in and for the State and county aforesaid, Martin P. Blauvelt, whose signature is attached thereto, and made oath that the statements made in the foregoing affidavit are true to the best of his knowledge and belief.

Given under my hand this fifth day of December, A. D. 1912.

[SEAL.] P. S. HANNAGAN,
Notary Public.

My Commission will expire March 15, 1915.

108 United States District Court for the Eastern District of Kentucky.

No. 731.

ILLINOIS CENTRAL RAILROAD COMPANY, Complainant,
versus
H. M. BOSWORTH, THOMAS RHEA, and C. F. CRECELIUS, Constituting the Board of Valuation and Assessment for the Commonwealth of Kentucky, Defendants.

Affiant, Daniel J. Brumley, says that he is and for about eight years last past has been the Engineer of Construction for complainant, Illinois Central Railroad Company and is familiar with the values of the railway lines of said company, and that on June 30, 1911, the value per mile of the tangible property, exclusive of equipment, outside the State of Kentucky, was exceeding $73,118.00 per mile, which is far in excess of the valuation per mile of the total capital stock value of said company fixed by the Board of Valuation and Assessment for the State of Kentucky for the taxes for the year 1912 upon the report made to said Board as of June 30, 1911, and that said valuation of said total capital stock for the State of Kentucky at $27,124,240.00 is in excess of the actual value of the tangible property of said company in Kentucky, which

is accordingly far less than the value per mile of the tangible
109 property of said railroad company outside the State of Kentucky, exclusive of equipment.

Affiant says that the amount fixed by said Board as the capital stock valuation for Kentucky of said company, to-wit: $27,124,240.00, distributed upon the Kentucky mileage of said company, to-wit: 569 miles, would yield $47,670.00 per mile on the Kentucky mileage of said company, and that even exclusive of equipment the tangible property of said company outside the State of Kentucky is of the value of $73,118.00 per mile, and that the value of the total equipment of said company, as appears by the affidavit of M. K. Barnum filed in this suit, to-wit: $38,256,118.00 distributed upon the total mileage of said company, to-wit: 4,589.39 miles, would yield a valuation per mile of equipment of the sum of $8,336.00; so that the value of the tangible property of said company outside the State of Kentucky far exceeds per mile the value of the tangible property of the said company in the State of Kentucky.

DANIEL J. BRUMLEY.

STATE OF ILLINOIS,
County of Cook, ss:

This day personally appeared before the undersigned, a Notary Public in and for the State and county aforesaid, Daniel J. Brumley, whose signature is attached thereto, and made oath that
110 the statements made in the foregoing affidavit are true to the best of his knowledge and belief.

Given under my hand this 5th day of December, A. D. 1912.

[SEAL.] V. W. FOSTER,
Notary Public.

STATE OF ILLINOIS,
County of Cook, ss:

Daniel J. Brumley says that he is and for about eight years last past has been the Engineer of Construction for complainant Illinois Central Railroad Company and has made and caused to be made a valuation of the physical properties of complainant comprising what is known as the terminals at Chicago, Illinois, and New Orleans, Louisiana, exclusive of rolling stock, and that by computation that is accurate and reliable he has ascertained that the value of the two said terminals, exclusive of rolling stock, was on June 30, 1911, not less than $129,850,718.15.

DANIEL J. BRUMLEY.

STATE OF ILLINOIS,
County of Cook, ss:

This day personally appeared before the undersigned, a Notary Public in and for the State and county aforesaid, Daniel J. Brumley, whose signature is attached hereto, and made oath that
111 the statements made in the foregoing affidavit are true to the best of his knowledge and belief.

Given under my hand this 5th day of December, A. D. 1912.
[SEAL.] GLENN N. ANDREWS,
Notary Public.

My Commission expires August 14, 1913.

112 On the day following to-wit on December 7, 1912, the following order was made and entered herein, to-wit:

#731.

ILLINOIS CENTRAL RAILROAD COMPANY
vs.
HENRY M. BOSWORTH et al.

Came the defendant by their attorneys and filed a supplemental affidavit by H. M. Bosworth herein.

Said supplemental affidavit of H. M. Bosworth filed by foregoing order is as follows to-wit:

United States District Court for the Western District of Kentucky.

No. 731.

ILLINOIS CENTRAL RAILROAD COMPANY, Complainant,
versus
H. M. BOSWORTH, Auditor, et al., Defendants.

Supplemental Affidavit of H. M. Bosworth.

(Filed Dec. 7, 1912.)

The affiant, H. M. Bosworth, as a member of the State Board of Valuation and Assessment, in order to show more fully the method followed by the Board in ascertaining the value of the complainant's franchise in Kentucky for the year 1912, says, that from the report made by complainant to the Auditor of Public Accounts, as required by law, for the year 1912, the Board found that the total value of the capital stock of complainant on the stock and bond plan was $330,139,534, and that the percentage that the mileage owned, operated, leased and controlled in Kentucky bears to the total mileage owned, operated, leased and controlled by complainant was admitted to be 12.3 per cent and that by
113 taking 12.3 per cent of the total capital stock as aforesaid, the Board found the value of the capital stock in Kentucky to be $40,607,164, from which it deducted the assessed tangible property of complainant in Kentucky, and found that on this calculation the value of complainant's franchise in the State of Kentucky for the year 1912 was shown to be $28,229.780.

Affiant says that from the aforesaid report made to the Auditor of Public Accounts, the Board found that the net income of complainant for its whole system was $14,383,044, and that by capitaliz-

ing this sum of 6 per cent the Board found the capital stock of complainant to be $239.717,400 on this plan, and that it then took 12.3 per cent of this sum, which gave the value of the capital stock of complainant in Kentucky as $29,485,240, and from this sum the Board deducted the assessed tangible property in Kentucky, $12,377,384, and found that the value of complainant's franchise on this plan for the year 1912 was shown to be $17,107,857; that after ascertaining the value of complainant's capital stock in the State of Kentucky on each of these plans, the Board then combined the value of the capital stock in Kentucky found on the stock and bond plan, to-wit, $40,607,164, and the value of complainant's capital stock in Kentucky found by capitalizing the net income, to-wit, $29,485,240, which gave the sum of $70,092,404, which sum was divided by two and gave as a result $35,046,202, which the Board found to be the true value of complainant's capital stock in Kentucky.

113½ Affiant says that the Board considered proof as to value of terminals outside and inside the State of Kentucky, and all other proof that was introduced before the Board, and finally fixed the value of complainant's capital stock in the State of Kentucky for the year 1912, at the sum of $27,124,240, or at 77 per cent of the actual value of complainant's capital stock in Kentucky as found by the Board and from this sum deducted $12,377,383, the assessed value of the complainant's tangible property in the State of Kentucky, and fixed the value of complainant's franchise in the State of Kentucky at the sum of $14,746,857, which is only 65 per cent of the actual value of complainant's franchise as found by the Board.

Affiant says that the Board had before it the net income of complainant derived from business done in Kentucky, and the net income derived in Kentucky and elsewhere, as well as the gross income derived from business done in Kentucky, and the gross income derived from business done in Kentucky and elsewhere, and upon a calculation the Board found that the percentage of net income derived on business done in Kentucky to the net income derived from business done in Kentucky and elsewhere bore about the same percentage as the mileage in Kentucky and elsewhere, but slightly more, and that the gross income derived from business done in Kentucky, and from business done in Kentucky and elsewhere, bore about the same percentage to each other as the mileage in Kentucky bore to the total mileage, but slightly more, and after a careful consideration the Board was of the opinion that

114 the mileage basis was approximately the correct basis on which to apportion values to Kentucky, although if the net income basis and the gross income basis had been considered, the capital stock in Kentucky would have been found slightly more than $35,046,202, and that the value of the capital stock of complainant in Kentucky as fixed by the Board to-wit, $27,046,202, is certainly not more than 80 per cent of the total value of complainant's capital stock in the State of Kentucky.

HENRY M. BOSWORTH.

STATE OF KENTUCKY,
County of Franklin:

This day personally appeared before me, H. B. Ware, a Notary Public in and for Franklin County, Kentucky, Henry M. Bosworth, one of the defendants herein, who made oath that the statements of the foregoing affidavit are true.

Witness my hand this 7th day of December, 1912.

H. B. WARE,
Notary Public, Franklin County, Kentucky.

My Commission expires January 15, 1916.

115 Kentucky—Data in Re 1912 Franchise Asst. in Federal Court.

1911 "Capital Stock" Assessment.....	$16,843,993	
Tangible	12,333,673	—Paid on.
Franchise	4,510,320	—Paid on.
1912 "Capital Stock" Assessment.....	$27,124,240	
Tangible	12,377,383	—Paid on.
Franchise	14,746,857	—In Litigation.

Tarbet's Blue Print, Presented to Bd. of V. & A., May 10, 1912.

Average Ky. Net for last 5 years.....	$1,612,131	
Capitalized at 6%.....	26,868,850	
Stock & Bond Value.....	25,855,154	
Present Worth by Reproduction.....	25,675,918	
Average	26,133,307	
Equalize at	56.8%	—(Our 20 counties only.)
Kentucky "Cap. Stock" Value for asst...	14,843,718	
Deduct Tangible	12,377,383	
Franchise	2,466,335	

Tarbet's Typewritten Statement, Presented to Bd. of V. & A., June 20, 1912.

Ave. System Net for last 5 years.....	$12,967,329	
Capitalized at 6%.....	216,122,100	
Kentucky Mileage Prorate.....	12.35	
Kentucky "Capital Stock" Value.....	26,691,085	
Equalize at	58.4%	—(Our 20 counties only.)
Ky. "Capital Stock" Assessment.....	15,587,594	
Deduct Tangible	12,377,383	
Franchise	3,210,211	

New Presentation, all System Values Prorated to Kentucky.

	Ky. Prorate of "Cap. Stk." Value.
1. From System Net	$26,583,024
2. From Reproduction	28,563,536
3. From Stock & Bonds	26,347,898
4. From Balance Sheet	26,825,849
Average Ky. "Capital Stock" Value	27,080,077
Equalize at	50%—(State wide ratio.)
Ky. "Capital Stock" Assessment	13,540,038
Deduct Tangible	12,377,383
Franchise	1,162,655

Equalization.	U. S. Census figures—ratio assessment to value. 1900.	1904.	1910.
All Kentucky Taxable	50.3%	48.3%	.....
" " Realty	62.8	62.2	.....
" " Personalty	34.5	32.2	.....
" " Farm Property.	63.4	.....	51.6%

Reports of State Board of Equalization Corroborate This Showing.

The Equalization Ratio used in the blueprint, 56.8%, was the average of 79 admissions by county officials and men of affairs in their 20 respective counties. McCracken County showed 38.5% and Webster County showed only 27.5%. Mr. Rhea protested that those counties were not assessed lower than 50%; so for the sake of argument I substituted 50% for each of those counties notwithstanding the admissions of the men best informed in their own counties, and so raised the average 58.4% in the typewritten statement.

116 Illinois Central Railroad Company.

Kentucky Franchise Assessment, 1912, to Ascertain Value of "Capital Stock" of 564 Miles of R. R. Operated in Kentucky by I. C. R. R. Co. and Fairly Equalized Assessment of Same.

First Method.

Net Income from Operation of System 4,551 *Miles, I. C. R. R.*

1907		$12,750,121
1908		12,742,868
1909		12,945,935
1910		12,004,674
1911		14,393,049
Ave.	5)	64,836,647
Cap. at	6%)	12,967,329
		216,122,150
		12.3
Ky. mileage pro		26,583,024
Equalize at		60%
Ky. Cap. Stk		15,949,814
Deduct Tang.		12,377,383
Franchise		3,572,431

117 Illinois Central Railroad Company.

Second Method.

Cost to Reproduce the Physical Property of I. C. System, as per Affidavits.

R. R.	$318,129,000
Equipment	38,256,118
	356,385,118
	12.3
Kentucky's mileage prorate	43,835,369
But, present worth of one average Kentucky mile, as per affidavits $51,027, and present worth of 4,551 miles at $51,027	232,223,877

Present worth of system as above	356,385,118
System value at $51,027 per mile	232,223,877
Excess outside Kentucky	124,161,241
	12.3
Kentucky's pro. of Excess	15,271,833
Ky. straight mileage prorate	43,835,369
Deduct pro rate of Excess	15,271,833
Val. of "Cap. Stock" in Ky	28,563,536
Equalize at	60%
Deduct Tangible	17,138,122
	12,377,383
Franchise Assessment	4,760,739

But, this is Estimated Cost, not Value.

118 Illinois Central Railroad Company.

Third Method.

	Par value.			Market or appraised.
I. C. Common Stock	$109,296,000 —	1911 at	132	$144,270,720
I. C. Debenture 4%	9,989,700 —	at	5	7,991,760
Funded Debt, Ave. 3.7 Outstanding / Total Int. $5,866,450	157,093,000 —	at	5	116,248,820
				268,511,300

But this represents all the property of the Corporation, including 154,300,746.49 worth of property that is separate and distinct from the 4,551 miles of R. R. operated as per affidavit of M. P. Blauvelt.

Deduct this	54,300,746
Remainder representing the 4,551 Mi. R. R.	214,210,554
	12.3
Ky. Mileage prorate	26,347,898
Equalize at	60%
Deduct Tangible	15,808,739
	12,377,383
Remainder, Franchise	3,431,356

119 Illinois Central Railroad Company.

Fourth Method.

Assets footing of Balance Sheet	$330,139,534
Deduct amount irrelevant to mileage operated, as per affidavit of M. P. Blauvelt	112,043,198
	218,096,336
Ky. Mileage prorate	12.3%
	26,825,849
Equalize at	60%
	16,095,509
Deduct Tang.	12,377,383
Franchise	3,718,126

120 Illinois Central Railroad Company.

Combining Kentucky's "Capital Stock" Valuations.

First Method	$26,583,024
Second Method	28,563,536
Third Method	26,347,898
Fourth Method	26,825,849
4)	108,320,307
Average	27,080,077
Equalize at	60%
	16,248,046
Deduct Tangible	12,377,383
	3,870,663

or $6,883 per mile.

121 Form 1579.

Illinois Central Railroad Company.

Equalization.

In 1912 we secured the sworn statements of men of affairs in twenty Illinois Central Counties in Kentucky stating their opinions as to the ratio of assessment to real value prevailing in their respective counties. These seventy-nine opinions showed an average of 53.9% in said twenty counties.

Advanced sheets of U. S. Census Report 1910 show the value of

all farms and farm property, including improvements, live stock and implements, in Kentucky $773,797,880. The Report of the Kentucky State Board of Equalization shows that this property was assessed at $399,554,313, or 51.6% of the value, and this property comprised about 43% of the aggregate assessment of all taxable property in the State. This same property showed an assessment in 1900 63.4% of value. As the 1900 assessment was 63.4% of real value, and the 1910 assessment was but 51.6%, it may be assumed that the present assessment is less than 50% of the value.

Pages 38 to 41 inclusive of Volume on Wealth, Debt and Taxation of Federal Census show that Realty was assessed in Kentucky in 1900 at 62.8%, in 1904 at 62.2%; that Personalty was assessed in 1900 at 34.5%, in 1904 at 32.2%; that all taxable property was assessed in 1900 at 50.3%, in 1904 at 48.3%.

The foregoing, taken in connection with the reports of the State Board of Equalization, lead to the conclusion that Kentucky taxable property is habitually and generally assessed on the average at approximately 50% of real value.

Analysis of Aggregate Assessment of All Property Subject to Ad Valorem Taxation in Kentucky, Showing % That Each Class is of the Total of All Taxable Property (1911).

	Aggregate assessment	Of whole.
Lands	351,555,618	33.92%
Lots	286,524,845	27.65%
Personalty, not equalized	83,468,030	8.05%
Personalty, equalized	124,905,527	12.05%
Railroads	109,938,195	10.61%
Franchises of Miscel. Corporations	17,975,958	1.74%
Banks & Trust Companies	32,805,202	3.17%
Distilled Spirits	29,146,142	2.81%
	1,036,319,517	100.00%

122 On March 10, 1913 the following order was made and entered herein, to-wit:

#731.

ILLINOIS CENTRAL RAILROAD COMPANY
vs.
H. M. BOSWORTH et al.

It is ordered by the court that this cause be continued.

123 On November 12, 1913 the following order was entered, to-wit:

#731.

ILLINOIS CENTRAL RAILROAD COMPANY
vs.
H. M. BOSWORTH et al.

Came the parties by their attorneys. The plaintiff, by its attorneys, filed an amended bill of complaint herein and the defendants, by their attorneys filed copies of amended and Supplemental Bill of Complaint and copy of Original Bill of Complaint filed in case #543 this Court, to be considered upon hearing of the motion for a temporary injunction herein, which motion was further argued by counsel for respective parties and the court being sufficiently advised filed its written opinion herein.

Said amended Bill of Complaint filed by the foregoing order is as follows, to-wit:

United States District Court, Eastern District of Kentucky.

No. 731.

ILLINOIS CENTRAL RAILROAD COMPANY, Complainant,
versus
HENRY M. BOSWORTH et al., Defendants.

Amended Bill.

(Filed Nov. 12, 1913. J. W. Menzies, U. S. Clerk.)

Complain-t, in order to manifest the facts of this case in accordance with the views expressed by the court in the opinion delivered herein on the 22d day of September, 1913, amends its Bill by leave of court and avers that all the property in the State of Kentucky for the year 1912 was assessed at not exceeding forty-eight and three-tenths per cent of its fair cash value, and complainant files herewith as a part of its Amended Bill an abstract taken from the United States Census Report covering the periods of 1900 and 1904, and complainant says that the ratio of assessed value to actual fair cash value of taxable property has continually declined in Kentucky since the year 1900 and that the percentage of actual fair cash value represented by the assessed value for the year 1912
124 was and is less than forty-eight and three-tenths per cent; and complainant, accordingly, modifies its averment in its original Bill, made in Clause No. 7 of said Bill, that the taxable property in Kentucky for the year 1912 was generally, systematically, intentionally and habitually assessed at not exceeding sixty (60%) per cent of its fair cash value and in lieu thereof says that said taxable property in Kentucky for said year was generally, systematically, intentionally and habitually assessed at not exceeding forty-eight and three-tenths (48.3%) per cent of its fair cash

value, whereby complainant was deprived of its property *with* due process of law and of the equal protection of the laws guaranteed to complainant by the Fourteenth Amendment to the Constitution of the United States; and, also, of the protection of the Constitution of the State of Kentucky, and especially of Sections 171 and 174 of Kentucky Constitution.

Complainant further states that for said year 1912, the assessed value of lands in Kentucky constituted 33.92% of the total value of all property assessed; the assessed value of town and city lots of ground constituted 27.65% of said total value of all property assessed; that personalty not equalized constituted 8.5% of said total value of all property assessed, and that personalty equalized constituted 12.5% of said total value of all property assessed, and that railroads constituted 10.61% of said total value of all property assessed, while banks and trust companies constituted 3.17%, franchises of miscellaneous corporations constituted only 1.74% and distillers of spirits constituted only 2.81%, so that the
125 property assessed in Kentucky for said year at 80%, viz., of banks and trust companies, constituted only 3.17%, while the assessed value of lands, town lots, and personalty equalized and personalty not equalized constituted 81.72%; and that, as appears by said census reports, aforesaid, and the later report set out in the opinion of this court returned on the 22d day of September, 1913, aforesaid, the aforesaid 81.67% of the taxable property in Kentucky for the year 1912 was assessed at approximately 48%, so that the 80% equalization applied to the property of the banks and trust companies is no criterion for equalization of railroad property, but the equalization applied by the taxing authorities of Kentucky to the great bulk of taxable property in said State, to-wit, realty and personalty, aforesaid, is the true criterion for equalization of railroad property; and as aforesaid the total taxable property in Kentucky for said year 1912 was assessed at less than 48.3%.

Wherefore, complainant prays as in its original Bill of Complaint herein for its costs herein incurred and for all further and general relief.

BLEWETT LEE.
TRABUE, DOOLAN & COX.

STATE OF ILLINOIS,
County of Cook, ss:

C. H. Markham, being duly sworn, says that he is the President of the complainant, Illinois Central Railroad Company, and his office is at Chicago, in the State of Illinois, the principal office of com-
plainant; that he has read the foregoing Amended Bill of
126 Complaint and exhibit thereto and knows the contents thereof and that the averments thereof are true, except to the extent that they are made on information and belief and that such averments so made he believes to be true.

C. H. MARKHAM.

Subscribed and sworn to before me in Chicago, Cook County, Ill., on the 27th day of October, 1913. My commission expires as a Notary Public on the 13th day of December, 1916.

[SEAL.] F. G. HULL.

Figures from United States Census, 1900 and 1904.

Volume on Wealth, Debt, and Taxation.

	1900.	1904.	Pages.
Total Value all Property	$1,365,130,718	$1,527,486,230	40, 41
Less Property Exempt	73,328,783	77,630,652	38, 39
Total Value Taxable Property	1,291,801,935	1,449,855,578	42, 42
Assessed Value Taxable Property	650,661,431	700,881,240	40, 41
Total Value Real Property & Impts.	795,839,607	859,247,997	40, 41
Less Real Property & Impts. Exempt	73,328,783	77,630,652	38, 39
Total Value Taxable Real & Impts.	722,510,824	781,617,345	38, 39
Assessed Value Taxable Real Property and Improvements	454,048,227	485,788,905	40, 41
Total Value Personalty	569,291,111	668,238,233	40, 41
Assessed Value Personalty	196,613,204	215,092,335	40, 41

127 Copies of Amended & Supplemental Bill of Complaint and copy of original Bill of Complaint in case #543 filed herein by order of Court on November 12, 1913 are as follows, to-wit:

128 Filed by Def't Nov. 12, 1913. J. W. Menzies, U. S. Clerk.

No. 543.

The Bill of Complaint of the Illinois Central Railroad Company Exhibited Against Charles C. McChord, Adam T. Siler, and McDougal Ferguson, Commissioners Composing the Railroad Commission of the State of Kentucky, in the United States Court for the Sixth Circuit and the Eastern District of Kentucky.

Humbly complaining, complainant showeth unto your Honors that it is a corporation duly created by and organized pursuant to the laws of the State of Illinois and not of the State of Kentucky, with its principal office in the State of Illinois, and a citizen of the said State of Illinois and not of the State of Ky., and that the defendants, Charles C. McChord, Adam T. Siler and McDougal Ferguson, are, and at all times hereinafter mentioned were each and all citizens and inhabitants of the State of Ky. and members composing the Railroad Commission of the State of Ky., and that the office of the said Commission is and at all times has been, as prescribed by law, in the City of Frankfort in said State of Kentucky, the capital of said State of Ky.

Complainant further showeth unto your Honors,

1. That complainant by its charter is and at all times hereinafter mentioned was empowered to operate railroads in the State of Illinois and other States of the United States as a common carrier of freight and passengers for hire, and has since the — day of ——,

1882, operated a railroad in the State of Kentucky from East Cairo in said State to Fulton in said State, constituting a link in a
129 through line of railroad extending from the City of Chicago in the State of Illinois and from many points North of the Ohio River across said river to the City of New Orleans in the State of Louisiana and to many other points in said State and other States South of the Ohio River, and operated many other railroads making physical connection with the railroad aforesaid and constituting one system of railroads aggregating over forty-three hundred and seventy (4370) miles of railroad, and extending into divers states of the United States, including the states of Illinois, Wisconsin, Minnesota, Iowa, South Dakota, Nebraska, Missouri, Indiana, Kentucky, Tennessee, Mississippi, Louisiana, and Alabama, and has continuously since the 15th day of September, 1897 operated in the state of Kentucky in addition to the aforesaid line extending from East Cairo to Fulton, certain railroads, to wit:

A railroad extending from Fulton, Kentucky, a City upon the State line dividing the States of Kentucky and Tennessee and situated partly in each of said States, to and into the City of Louisville in the State of Ky., and a line of railroad extending from Horse Branch, a station on the railroad last aforesaid, to and into the City of Owensboro in the State of Ky., a railroad extending from Hopkinsville to Henderson, both in the State of Ky., crossing at Princeton in Kentucky the line of railroad extending from Fulton to and into Louisville aforesaid, a railroad extending from Cecilia on the line extending from Fulton to Louisville aforesaid, through Elizabethtown to Hodgenville in Ky., a line extending from Paducah, a City on the line extending from Fulton to Louisville aforesaid to East Cairo aforesaid and other railroads except that the last two lines have been operated a shorter time. That all
130 the railroads in Ky. have physical connection with each other, and that the railroad aforesaid extending from Fulton to Louisville has at Fulton direct physical connection with complainant's railroad extending from Fulton to Memphis, to New Orleans and elsewhere in the states of Tennessee, Mississippi, Louisiana and Alabama, and with complainant's other railroad extending from Fulton to Jackson in the State of Tennessee aforesaid and to divers points in the states of Louisiana, Tennessee, Mississippi and Alabama: that the aforesaid railroads extending to East Cairo aforesaid have direct physical connection with complainant's railroads in the State of Illinois and thence with the railroads in other states North of the Ohio River; that at Paducah complainant's railroads aforesaid make connection via a transfer boat with complainant's railroads in the State of Illinois and thence with its railroads in other states; that the railroad aforesaid extending from Hopkinsville to Henderson has direct physical connection at Henderson with complainant's railroad extending thence to Evansville in the State of Indiana and from Evansville to other points in the State of Indiana and other states and that complainant transacts, and for many years last past has transacted over its system of railroad including all the railroads aforesaid in Kentucky as a common carrier of freight and

passengers the transportation of domestic or intrastate and interstate business, and within said State of Ky. transacts and has since it began operation of said railroads in said State transported both domestic or intrastate and interstate commerce.

2. That in the acquisition of the right of way necessary for construction, and in the construction and equipment of the railroads aforesaid a large amount of money was necessarily and properly expended and that the said railroads and terminals situate wholly within the State of Ky. and used by complainant in the
131 transaction of purely domestic or intrastate business in Ky., and the equipment of said railroads used also in said intrastate business are of the reasonable and fair value of Twenty-six Million, ($26,000,000.00) Dollars at least. That complainant's system of railroads are and have always been skilfully and economically managed and that complainant has been unable to conduct its traffic interstate and intrastate at less than 71.03 per cent of the gross receipts from such traffic inclusively of taxes assessed against said property, and that there is no reason to anticipate that such traffic can be handled at less or that such taxes will amount to less than as heretofore as aforesaid. That the additional cost of conducting intrastate traffic in Ky. over the cost of all traffic conducted in said state both interstate and intrastate is not less than thirty per cent of the gross receipts from intrastate traffic and that the amount of intrastate traffic has for at least one year last past been only 23.46 per cent of the entire traffic in Ky. so that complainant is unable and has always since it began operation of its railroads aforesaid in Ky. been unable to earn a fair and just return upon its capital invested in railroad tracks, terminals and equipment engaged in such intrastate traffic although it has charged for the handling of such traffic no more than a fair, just and reasonable rate of tolls and charges. That, nevertheless, the Railroad Commission of Ky., a department or instrumentality of the State Government, on the 20th day of June, A. D., 1906, delivered an opinion, and then declared that it would on the 19th day of July, A. D., 1906, enter an order and on that day give to complainant official notice thereof, and on said 19th day of July, 1906, said Commission, as complainant is advised, did enter an order, and did mail to complainant's at-
132 torneys a copy thereof and of said opinion which are filed herewith as part of this bill marked "Exhibit X" which order is in words and figures as follows, to wit:

"The Commission is further of the opinion that the maximum mileage scale of rates published in the Illinois Central Railroad Company's Local Freight Tariff No. A.-1045, effective December 2, 1905, for all distances therein shown under classes 1, 2, 3, 4, 5, 6, A, B, C, D, E, H, F, K, L, M, N, and O, are extortionate, unjust and unreasonable in so far as same are in excess of the rates hereinafter fixed in table designated 'Maximum Rates, Ky. Railroad Commission's Standard Tariff Number 2, Applicable to the Illinois Central Railroad Company.' It is, therefore, Ordered That said defendant, the Illinois Central Railroad Company be, and it is hereby, forbidden to charge, collect, and receive for the transportation of com-

modities to and from points wholly within the State of Kentucky rates in excess of the rates shown in the following table for the classes and distances therein stated, to wit:

(Here follows the schedule of rates promulgated by the Commission and specified on page 22 of said Exhibit X.)

"Provided, however, That where said defendant, the Illinois Central Railroad Company has in effect a tariff, or tariffs, of rates upon any commodity or commidities belonging to either of said classes and for any of said distances, less than that shown in said Maximum Table of Rates, and herein designated 'Maximum Rates, Kentucky Railroad Commission's Standard Tariff Number 2, applicable to the Illinois Central Railroad Company,' said defendant shall not charge, collect or receive rates in excess of those shown by said tariff or tariffs."

Complainant avers that the Railroad Commission aforesaid was created by Section 209 of the Constitution of the State of Kentucky; and that by an Act approved on the 10th day of March, 1900 the Legislature of said State prescribed the duties of the Commission regarding the establishment of rates for common carriers by railroad, said Act being generally known as the "McChord Law," and entitled,

"An Act to prevent railroad companies or corporations owning and operating a line or lines of railroad, and its officers, agents and employes from charging, collecting or receiving extortionate freight or passenger rates in this Commonwealth, and to further increase and define the duties and powers of the Railroad Commission in reference thereto, and prescribing the manner of enforcing the provisions of this act and penalties for the violation of its provisions."

Said Act provides as follows:

133 "Sec. 1. When complaint shall be made to the railroad commission accusing any railroad company or corporation of charging, collecting or receiving extortionate freight or passenger rates, over its line or lines of railroad in this Commonwealth, or when said commission shall receive information, or have reason to believe that such rate or rates are being charged, collected or received, it shall be the duty of said commission to hear and determine the matter as speedily as possible. They shall give the company or corporation complained of not less than ten days' notice, by letter mailed to an officer or employe of said company or corporation, stating the time and place of the hearing of the same; also the nature of the complaint or matter to be investigated, and shall hear such statements, argument or evidence offered by the parties as the commission may deem relevant, and should the commission determine that the company or corporation is, or has been, guilty of extortion, said commission shall make and fix a just and reasonable rate, toll or compensation, which said railroad company or corporation may charge, collect or receive for like services thereafter rendered. The rate, toll or compensation so fixed by the commission shall be entered and be an order on the record book of their office and signed by the commission and a copy thereof mailed to an officer, agent or employe of the railroad company or corporation affected thereby, and shall be in full force and

effect at the expiration of ten days thereafter, and may be revoked or modified by an order likewise entered of record. And should said railroad company or corporation or any officer, agent or employe thereof, charge, collect or receive a greater or higher rate, toll or compensation, for like services thereafter rendered than that made and fixed by said commission, as herein provided, said company or corporation, and said officer, agent or employe shall each be deemed guilty of extortion, and upon conviction shall be fined for the first offense in any sum not less than five hundred dollars, nor more than one thousand dollars, and upon a second conviction, in any sum not less than one thousand dollars nor more than two thousand dollars, and for a third and succeeding convictions, in any sum not less than two thousand dollars nor more than five thousand dollars."

"Sec. 2. The circuit court of any county into or through which the line or lines or road carrying such passenger or freight, owned or operated by said railroad, and the Franklin Circuit Court shall have jurisdiction of the offense against the railroad company or corporation offending, and the circuit court of the county where such offense may be committed by said officer, agent or employe shall have jurisdiction in all prosecutions against said officer, agent or employe"

"Sec. 3. Prosecutions under this act shall be by indictment."

"Sec. 4. All prosecutions under this act shall be commenced within two years after the offense shall have been committed."

134 3. Complainant avers that its rates of toll and charges have always been reasonable, fair and just to the public and persons patronizing complainant and that no complaints of the amounts of its charges upon intrastate traffic have ever been made to complainant or to the Railroad Commission except in a few sporadic cases, and that in such cases complainant has voluntarily made such modification of such rates as was just, almost invariably to the satisfaction of the complaining shipper. That in 1905 J. Ed. Guenther and others complained to the Commission aforesaid of certain rates made by the railroad companies entering Owensboro, to wit, Louisville and Nashville Railroad Company, Louisville, Henderson & St. Louis Railway Company and complainant, but made no specific complaint of any other rates. That on August 26, 1900, said complainants amended their complaints and complained of the rates of nearly all if not all of the railroad companies transacting business in Ky., among other things alleging "that all local freight rates from and to all local points in the State of Kentucky, as fixed and charged by the defendant railroads, on all classes of freight, are excessive, discriminatory and extortionate." Also alleged "that the local rates of freight as fixed, maintained and charged by the defendants herein are exorbitant, excessive and extortionate. They say that some of said rates are excessive; that some of them are extortionate and all of them discriminate in favor of some local communities as against other local communities, and that the rates charged and maintained by defendant companies are in open violation of law, against public policy, illegal and extortionate." Also, "that the local rates fixed, maintained and charged by defendant railroads throughout the State of Kentucky, are not uniform; that they do not treat each local community

with fairness or equitably, but the rates are arbitrarily fixed and maintained so as to build up a community or discriminate
135 against it at the pleasure of defendant companies."

They prayed the Commission "not only to revise the local rates in and out of the City of Owensboro, but to revise and adjust the rates between all local points, from and to every local point throughout the entire State of Kentucky," and for further relief.

Complainant avers that no specific complaint was made of any rate charged by any railroad in the State of Ky., except concerning the rates to and from Owensboro, and no explanation made by the complaining shippers of any interest which they or any of them had in any other rates and no facts were stated showing any rate charged by any railroad in Ky. to be extortionate, unjust or unfair to shippers.

Complainant avers that on September 14, 1905, the Norman Lumber Company and other dealers in lumber tendered an intervening petition specifying their business and alleging "that all local freight rates from and to all points in the State of Kentucky on all commodities, as fixed and charged by the defendant railways are excessive and extortionate and that the freight classifications are discriminatory and extortionate. Petitioners aver and charge that the rates and classifications on lumber, logs, ties and all timber commodities to and from all points in Ky. are especially extortionate, discriminatory and unreasonable."

On Oct. 14, 1905, the Commonwealth of Ky. undertook to file an intervening petition which made no complaint of any specific rate, but complained of all local rates upon all railroads in the State.

Complainant before answering the complaints moved the Commission.

136 (*a*) To require Guenther and others to elect between improperly joined causes of action and improperly joined defendants, and that the complaint against complainant and the other defendants be heard separately; (*b*) that all of the amended complaint concerning alleged discrimination in rates between different communities to be stricken out for lack of jurisdiction in the Commission to consider it; (*c*) that Guenther and others be required to make their amended complaint more specific specifying local rates, and from and to what points, and on what commodities as charged by complainant were discriminatory or extortionate, and what rates discriminated between communities and commodities; (*d*) that the petitions of the Lumber Companies be stricken from the file as unauthorized by law; (*e*) that the part of the intervening petitions of the Lumber Companies referring to classifications of logs, lumber, cross ties and timber commodities be stricken for want of jurisdiction in the Commission over classifications and that so much of the petitions prayed the review and revision of rates on all commodities in Kentucky be stricken as the Lumber Companies had no interest in any rates other than those on logs, lumber, cross ties, and timber commodities; (*f*) that the Commonwealth's petition be stricken because filed without warrant of law, and the Commonwealth had not the capacity to sue; (*g*) that the Commonwealth, having been permitted to sue, be required to elect between improperly joined causes of action

and improperly joined defendants, and to make more specific its complaint showing what rates and on what commodities, and between what points and communities extortion and discrimination were supposed to exist; (*h*) demurrer to the Commonwealth's petition for want of jurisdiction of complainant, or the subject of the action, and for want of legal capacity in the Commonwealth to sue; (*i*) a general demurrer to the Commonwealth's complaint for want of a cause of action, and made divers other points and objec-
137 tions to the proceedings against complainant, all of which were by the Commission overruled, and complainant required to answer and did answer traversing the allegations of all the petitions.

That after the rulings aforesaid the Commission propounded to complainant and all the other defendants divers questions which were answered as fully as information obtainable permitted, and complainant and said other defendants produced for examination by the Commission all their officers and agents as required by the Commission, and although it appeared by the uncontradicted evidence elicited from such sources that complainant was receiving a return upon its capital invested in its railroad, terminals, and equipment used for purely intrastate or domestic traffic in Ky. less than a fair and just return or income, the said Commission nevertheless delivered the opinion and entered the order aforesaid.

4. Complainant avers that no specific rate or rates of complainant were investigated by the Commission and that the opinion delivered, as appears therefrom, is confined almost exclusively to the Louisville & Nashville Railroad Co. and its condition, and that the tariff of rates promulgated by the Commission in the order aforesaid was based upon a revision of the rates theretofore charged by the Louisville & Nashville R. R. Co. and without any investigation of, consideration of, or regard to the special circumstances and conditions affecting complainant, and that the tariff promulgated in the order aforesaid of rates to be charged by complainant forbids complainant to charge in any instance a higher rate than the rate to be charged by the Louisville and Nashville R. R. Co. for similar distances.

138 Complainant avers that in the opinion and order aforesaid the Commission declared that,

"It appearing to the Commission from tariffs now on file in this office that many of the commodities assigned to the various classes stated in the Maximum Rates, Kentucky Railroad Commission's Standard Tariff Nos. 1 and 2, herein adopted, are transported by the respective railroads on commodity rates, or rates less than those fixed by said standard tariffs, it is now ordered, That said commodity or such other rates as are lower than those fixed by said Raliroad Commission's Standard Tariffs Numbers 1 and 2, shall remain in effect as Maximum Rates until otherwise ordered by this board."

That complainant has and during the entire time of its operation of railroads in Ky. has had in effect commodity rates, consisting principally of rates covering certain commodities for certain distances or in certain territory, and class rates covering certain ter-

ritory and certain cases existing because of the peculiar circumstances and conditions governing the situation, which are and have always been much lower than the class rates quoted and set out in the tables filed with the opinion of the Commission and especially with said tariff Number 2. That said rates are in many if not all circumstances so low as to be unfair, unjust and unreasonable to complainant if taken and accepted in connection with the tariff of rates promulgated by the Railroad Commission and in many if not all instances said commodity rates, and many of said rates belonging to some one or more of said classes of rates are considerably lower than similar rates in force upon other railroads, competitors of complainant for business, and that the said order of the Commission quoted as aforesaid forbids complainant to raise or advance, but requires complainant to retain the aforesaid commodity and certain class rates regardless of whether the said rates are too low or unreasonably low or confiscatory and complainant says that as required by the said Commission to be maintained they are unfairly and unjustly low and are confiscatory and violative of Sec-
139 tion 1 of Article 14 of the Constitution of the United States as depriving complainant of its property without due process of law. That said commodity rates and said certain class rates are now considerably lower than the rates fixed and promulgated by said Railroad Commission in said tariff Number 2, that none of said rates has been investigated by the Commission and that complainant is by said order of the Commission forbidden to raise or advance the said commodity and certain rates regardless of their justness, fairness or reasonableness, although considerably and materially lower, as aforesaid, than the rates fixed by the Commission as in its opinion fair, just and reasonable.

5. Complainant avers that its gross receipts from intrastate freight traffic for Ky. carefully estimated and approximated for the fiscal year ending June 30, 1905 were $733,191.00 earned at the rates then and now in force upon complainant's railroad in Ky., and that upon the same volume of traffic transported at the same expense,—and complainant avers that there is no reason to believe, that the volume of traffic would increase or the expense decrease,—the income calculated upon the rates proposed by the Commission if enforced would yield to complainant gross receipts from said intrastate freight traffic in Ky., carefully estimated and approximated, $49,744.00 less than $733,191.00, and would reduce complainant's gross receipts from such traffic nearly seven per cent, and its net receipts therefrom several times such per cent, if indeed any net receipts whatever were realized by complainant; and reduce by necessary and direct operation, complainant's interstate commerce returns more than double $49,744.00.

6. Complainant avers that in the amended complaint aforesaid of said Guenther and others, the petition of the lumber men aforesaid and the petition of the Commonwealth the Louisville &
140 Nashville R. R. Co., Cincinnati, New Orleans & Texas Pacific Railway Co., the Southern Railway Co. in Ky., the Lexington & Eastern R. R. Co., the Louisville, Henderson & St.

Louis Railway Co., complainant, Illinois Central R. R. C., & all other railroads operating lines in Ky., but unnamed in the petition, were called defendants, and that the said order of said Railroad Commission is directed against only the Louisville & Nashville R. R. Co., the Illinois Central R. R. Co., Cincinnati, New Orleans & Texas Pacific Railway Co., Southern Railway Co., in Ky., and the Nashville, Chattanooga & St. Louis Railway Co., a company not included by name but only in the general designation in said petition of "All other railroads that operate their lines in the State of Ky." That defendants, the said Railroad Commission, have made no order against the Lexington & Eastern Railroad Co., the Louisville & Atlanta R. R. Co., the Louisville, Henderson & St. Louis Railway nor sundry other companies having and operating railroad lines in the State of Ky. although said named railroad companies and divers other railroad companies unnamed have and during all the time aforesaid have had in force and effect rates materially higher than those of complainant and higher than those prescribed in the said order to be observed by the six railroad companies embraced in the said order, which rates of said other companies are charged the public under substantially similar circumstances and conditions to some one or other of the railroad companies named in the said order, and complainant accordingly avers that the said order is for said reason partial, unjust and discriminatory, in excess of the power of the said Commission and denies to complainant the equal protection of the laws; and complainant avers that it has in force, and has at all said times had in
141 force commodity rates and certain class rates considerably lower than the class rates fixed and promulgated in the order aforesaid and materially lower than similar commodity rates and class rates charged by complainant's competitors in the same territory, and that by reason of the prohibition of complainant's advancing the said lower rates it is prevented from charging as high rates as its competitors are permitted by the said order to charge by the aforesaid tariffs Nos. 1 and 2 fixed by the Commission whereby complainant is by the said order denied the equal protection of the laws in violation of Section 1 of the Fourteenth Amendment aforesaid to the Constitution of the United States.

7. Complainant avers that before the attempted revision of its rates by the said Commission, said rates were reasonable and just and a fair and just remuneration, and no more, for the services rendered by complainant in the transportation of intra-state freight in Ky., and no more than a fair and just return upon the capital of complainant invested in the railroad, terminal facilities, equipment and other property embarked in the transportation of freight between points in Ky., and that the commodity rates, and the aforesaid contain class rates lower than the rates in the schedule of maximum rates aforesaid were so low as to yield far less than a fair or just return to the complainant for the services rendered, or as income upon capital invested as aforesaid, and that nevertheless, as aforesaid, complainant is forbidden by the order of the Commission to advance the said rates although no complaint was ever made of

said rates or any of them, except as aforesaid, nor of any rates charged by complainant except upon the general undefined and wholesale complaint made by Guenther and others, and abandoned by them, and made by the Commonwealth in its aforesaid unauthorized complaint.

142 8. Complainant is advised, and, accordingly, charges that the aforesaid Act of March 10, 1900 is in conflict with Article 4, Sec. 4 of the Constitution of the United States guaranteeing to every State a Republican form of government and of Secs. 27 & 28, 109 & 135 of the Constitution of Ky. dividing the powers of government into three distinct departments, and forbidding any person or collection of persons being members of one of such departments exercising any power properly belonging to either of the others because said Act assumes to confer upon said Railroad Commission legislative, judicial, and executive powers.

That said Act of March 10, 1900 is in conflict with Article 1, Sec. 8, Sub-Sec. 3 of the Constitution of the United States in assuming to regulate interstate commerce, the regulation whereof is by said provision of said Constitution confided to the Congress; and in conflict with Art. 8 of the amendments to said Federal Constitution, and Sec. 17 of the bill of rights of the Constitution of Ky. in assuming to impose, and providing for the imposition of excessive fines and penalties.

That said Act. of March 10, 1900 is in conflict with Sec. 1 of Article 14 of the amendments to said Constitution of the United States in denying to complainant the equal protection of the laws by placing complainant and other railroad companies in the State of Ky. under the arbitrary power of said Railroad Commission and compelling them to litigate concerning the reasonableness of their rates under peril of excessive fines and penalties in case of defeat in said litigation while common carriers other than carriers by railroad are not subjected to such arbitrary powers nor such perils; and in subjecting complainant and other railroad companies in Ky. to the regulation by such railroad Commission of their rates and charges while other common carriers are not so subjected;

143 and in requiring complainant and said other railroad companies to submit to the fiat of said Railroad Commission in fixing a rate of toll or charge for transportation with no opportunity for judicial investigation and no opportunity to make defense in court as to the reasonableness, justice or fairness of said rate or as to whether or not said rate be confiscatory except at the peril of enormous and ruinous fines and penalties in case of failure of complainant and such other railroad companies to make good their claims in said judicial proceedings while other transportation companies are subjected to no such burdens.

That said Act is in conflict with said Sec. 1 of Art. 14 of the amendments aforesaid because it denies to complainant and said other railroad companies due process of law in requiring them to submit to charge any rate of freight whatsoever fixed by said Railroad Commission whether fair or just or not, and whether confiscatory or not with no opportunity for a judicial determination of

the question of fairness or justice of said rate, or whether it be confiscatory or not; and with no opportunity to make any defense to any indictment instituted because of the failure or refusal of complainant or one of its officers, agents or employes to charge the rate fixed by said Commission, or of the act of complainant, its officer, agent or employe in charging a higher rate than fixed by said Commission except at the peril of paying excessive and ruinous fines and penalties in case of failure to make successful defense to said indictment or indictments, and because said Act permits no defense at all to the indictment provided for in the Act.

9. Complainant further shows that the Railroad Commission aforesaid, a department or instrumentality of the government of the State of Ky. aforesaid, created by the Constitution of said State and especially by Sec. 209 of said Constitution adopted September
144 28, 1891, by its aforesaid acts in reducing the rates of toll and charges aforesaid employed by complainant by the amounts aforesaid, if permitted to put said threatened schedule of rates into effect will deprive complainant of its property without due process of law by compelling it as a common carrier to perform the service of transportation of freight between points in the State of Ky. without a fair or just remuneration, if any, and for a toll and charge which would not yield to complainant a fair or just remuneration, if any, for the services rendered, but would amount to a confiscation of the property of complainant embarked in such transportation, and take such property for public use without compensation.

Complainant avers that by reason of the facts hereinbefore set out it would suffer great and irreparable damage and injury incalculable and not subject to computation in many thousands of dollars, and that the matter and amount in dispute in this suit exceeds exclusive of interest and costs many times Two Thousand Dollars; that complainant is without adequate remedy at law and can have relief only in a court of equity where matters of the sort are properly cognizable and relievable; that a resort to a court of equity is necessary to prevent and avoid a great multiplicity of suits on behalf of shippers and consignees, and on behalf of the Commonwealth or Railroad Commission to enforce the aforesaid fines and penalties prescribed by the aforesaid Act of March 10, 1900 and other statutes of Ky.

In consideration whereof, and for as much as complainant is remediless in the premises at and by the strict rules of the common law and is relievable only in a court of equity where matters
145 of the kind are prop-rly cognizable and relievable, complainant prays that the defendants Charles C. McChord, Adam T. Siler and McDoungal Ferguson as Railroad Commissioners of the State of Ky. their employes and representatives be enjoined and restrained from putting into effect on the 29th or 30th day of July, or at any other time, tariff No. 2 prescribed in its order aforesaid, or any other tariff of rates lower than the rates now in force upon the railroads in Ky. operated by complainant, and from forbidding complainant to raise or advance its commodity rates or such other rates as are lower than the rates prescribed in said tariff

promulgated by said order, or in requiring or attempting to require complainant to charge any less rate of toll or freight than is now charged by complainant as aforesaid for the transportation of freight between points in Ky., and from causing complainant to be indicted or otherwise proceeded against or punished for failing or refusing to charge the rates of toll or charges fixed by the said order or tariffs promulgated therewith as threat*h*ened by the Commission, or for charging any other rate higher than the rate so fixed or threatened by the Commission as aforesaid, and enjoined and restrained from instituting against complainant, its officers, agents or employes, any actions or other proceedings, or causing it or its officers, agents or employes to be indicted or otherwise prosecuted in any of the courts of the Commonwealth of Ky. or else where because of complainant's failure or refusal to charge the rates fixed by the tariff promulgated as aforesaid or different rates from those now charged by complainant, and may it please Your Honors to grant unto complainant a writ of subpœna of the United States of America issuing out of, and under the seal of this Honorable court directed to the said defendants, McChord, Siler and Ferfuson, as Railroad Commissioners aforesaid, commanding them on a
146 day certain to be named therein, and under a certain penalty to be and appear before this Honorable Court, and then and there to answer but not under oath,—such oath being hereby expressly waived—all and singular the premises, and to stand to, perform, and abide such order, direction and decree as may be made against them in the premises and as shall to your Honors seem to be meet and agreeable to equity and good conscience; that a temporary injunction may issue against the said defendants and each of them, their employes and representatives and all persons acting or claiming to act by, through or under them or any of them agreeably to the prayer aforesaid, and that meanwhile a temporary restraining order to the same effect be issued and that upon the hearing of this cause and entry of a decree herein said temporary injunction may be made perpetual. That in and by said restraining order, temporary and final injunctions, said defendants, their employes and representatives and all other persons acting or claiming to act for them, or through them, be enjoined and restrained from putting into effect the tariff No. 2 aforesaid promulgated by the order of the Commission aforesaid and from enforcing or attempting to enforce the said order or tariff or any other tariff against complainant, and from interfering in any manner with complainant in the transaction of its business aforesaid at the rates now in force upon its lines; and may it please Your Honors to grant unto complainant such other and further relief as the circumstances of the case require, and to Your Honor shall seem meet, and complainant, as in duty bound, will ever pray.

ILLINOIS CENTRAL RAILROAD COMPANY,
By TRABUE, DOOLAN & COX,
Counsel.

147 STATE OF KENTUCKY,
Jefferson County, set:

Charles C. Cameron being duly sworn says, upon oath that he is the General Freight Agent of the lines of complainant South of the Ohio River including the lines in Kentucky, that there is no executive officer of complainant now in Kentucky, nor any other officer higher in rank than affiant, that the averments of the foregoing bill of complaint are true so far as the facts are averred directly, and that so far as they are stated upon information or advice he believes them to be true.

CHARLES C. CAMERON.

Subscribed and sworn to before me by Charles C. Cameron in Jefferson County, Kentucky this 24th day of July, A. D. 1906. My commission as Notary Public expires Feb'y 15, 1908.

[SEAL.] V. C. YEAGER,
Notary Public, Jefferson Co., Ky.

Filed July 25th, 1906. W. G. Chapman, Clerk.

A copy.

Attest:

J. W. MENZIES,
U. S. Clerk.
By M. S. BARRETT, *D. C.*

148 Filed by Def't Nov. 12, 1913. J. W. Menzies, U. S. Clerk.

Amended and Supplemental Bill of Complaint.

In the Circuit Court of the United States for the Eastern District of Kentucky, at Frankfort.

In Suit No. 543.

To the Honorable the Judges of the Circuit Court of the United States for the Eastern District of Kentucky, Sitting in Equity, at Frankfort:

Illinois Central Railroad Company, the complainant in this suit, a corporation created by and existing under the laws of the State of Illinois, and a citizen and resident of said State, by leave of the court in that behalf first had and obtained, brings this its amended bill of complaint against the defendants Adam T. Siler, McDougal Ferguson and Llewellyn P. Tarlton, citizen*d* and residents of the State of Ky. individually and as members of the Railroad Commission of the Commonwealth of Ky., and the Railroad Commission of the Commonwealth of Ky. composed of said members, and thereupon complainant complains and says:

That heretofore, to wit, on the — day of July, A. D. 1906 com-

plainant duly made and filed its original bill of complaint in this suit against Chas. C. McChord, Adam T. Siler and McDougal Ferguson, members of the Railroad Commission aforesaid, and against said Railroad Commission composed of said members, to which original bill this is an amendment and supplement, and to which said original bill complainant begs leave to refer, and complainant hereby repeats all and singular the averments in said bill contained and set forth, and prays that the same may be held and taken as a part of this amendment and supplement in the same manner as if said averments were herein fully and at large set forth, except that said averments of said original bill may be modified by the averments of this amendment and supplement:

149 And complainant further shows unto Your Honors that on the — day of Nov. A. D., 1907 the defendant Chas. C. McChord tendered his resignation as Railroad Commissioner, and also as Chairman of the Railroad Commission aforesaid to the Governor of the Commonwealth of Ky. and said resignations were immediately accepted, and that on the — day of Dec. A. D. 1907 the said Governor appointed and commissioned W. P. Walton as Railroad Commissioner instead of, and to fill out the unexpired term of said McChord as said Commissioner; and that on the 10th day of Dec. A. D., 1907 Llewllyn P. Tarlton who had been duly elected at the Nov. election A. D. 1907 as Commissioner for the Second Railroad Commission District, being the District wherein the said McChord and Walton had been Commissioners, received his commission as such Commissioner from the Governor aforesaid and duly qualified and took the oath, and thereupon became and has ever since been Railroad Commissioner in lieu and instead of the said Walton, and is now acting as said Commissioner for the said Second Railroad District of Ky.; and at the said Nov. election A. D. 1907 aforesaid Adam T. Siler and McDougal Ferguson were re-elected Railroad Commissioners for the First and Third Railroad Commission Districts of Ky. as their own successors respectively and on said 10th day of Dec. A. D. 1907 duly received from the Governor of Ky. aforesaid their respective commissions as such Commissioners, and on the 11th day of Dec. A. D., 1907 the said Commissioners re-organized the said Railroad Commission by the election of said Adam T. Siler as Chairman, and that he has ever since been and now is Chairman of the said Commission and that said defendants threaten to, and unless enjoined will take proceedings to enforce the Railroad Commission's order of June 20, 1906 and July 19, 1906 hereinafter mentioned; and complainant

150 further shows unto your Honors that in and by paragraph 2 of its original bill of complaint it averred that complainant's railroads and terminals situate wholly within the State of Ky. and used by complainant in the transaction of purely domestic or intrastate business in Ky., and the equipment of said railroads used also in said intrastate business were of the reasonable and fair value of $26,000,000.00 at least, but complainant avers that since the said bill was filed complainant has caused a more careful estimate to be made of the value of its said railroads and equipment referred to as aforesaid and as ascertained, and complainant avers

that it is true, that the said railroads and equipment used by complainant in the transaction of purely domestic or intrastate business in Ky. are of the reasonable and fair value of at least $28,768,-277.77, wherefore by permission of the court the said sum of $28,-768,277.77 is now alleged and averred as the value of said railroads and equipment; and complainant further shows unto your Honors that in and by paragraph 5 of its original bill of complaint it was averred that the income of complainant calculated upon the rates proposed by the Railroad Commission aforesaid if enforced would yield to complainant gross receipts from its intrastate freight traffic in Ky., carefully estimated and approximated, $49,744.00 less than its gross receipts for the fiscal year ending June 30, 1905 earned at the rates then in force upon complainant's railroad, and would reduce complainant's gross receipts from such traffic nearly seven per cent, and its net receipts therefor several times such amount, if, indeed, any net receipts whatever were realized by complainant; and reduce by necessary and direct operation, complainant's interstate commerce returns more than double $49,744.00, but complainant avers that since the said bill was filed complainant has at

151 an enormous expense of several thousand dollars computed the said loss which would result to complainant by the application of the aforesaid rates promulgated by the said order of the said Railroad Commissioners to complainant's intrastate freight traffic in the State of Ky. and ascertained, and complainant avers that it is a fact, that complainant's income calculated upon the said rates proposed by the said Commissioners if enforced would yield to complainant gross receipts from said intrastate freight traffic in Ky., at least the sum of $46,704.87 June 30, 1905, and $65,680.53 June 30, 1906 less than complainant would receive from said traffic at the rates theretofore and by virtue of the order of this court *not* in force on complainant's railroad lines in Ky. and that complainant's gross receipts from such traffic would by the application of said rates promulgated by said Commissioners be reduced nearly — per cent. and its net receipts therefrom several times such per cent, if, indeed, any net receipts whatever were realized therefrom by complainant, and by the necessary and direct operation of said rates promulgated by said Commissioners complainant's interstate commerce returns upon traffic transported partly within the State of Ky. would be reduced by at least the sum of $3,939.60 June 30, 1905 and $4,312.23 June 30, 1906, additional and complainant says that its averments aforesaid upon this subject in paragraph 5 of its original bill were made through error and mistake and under misapprehension of complainant, and before complainant had time to complete the calculations upon which its computations of the said los-es upon intrastate and interstate freight aforesaid have been since made, wherefore complainant corrects the said averments as aforesaid, by permission of this court.

152 And complainant further shows unto your Honors that the order made and promulgated by the defendants, as aforesaid on the 20th day of June A. D., 1906, and on the 19th day of July, 1896 as is more fully set out and averred in the complainant's

original bill aforesaid in paragraph 1 thereof, is in conflict with Art. 1 Sec. 8, Sub-section 3 of the Constitution of the United States, in assuming to regulate interstate commerce, the regulation whereof is by said provision of said Constitution confided to the Congress of the United States because said order prescribing the rates of freight to be charged thereafter upon traffic hauled between points in the State of Ky. would necessarily and inevitably regulate, fix and determine the rates of freight to be charged by complainant and by complainant and other common carriers by railroad transporting freight interstate, i. e., between points in the State of Ky. and points in other states of the United States, and between points in other states over lines passing through the State of Ky., and especially between points *h*ere the interstate rate or rate for transportation between points in Ky. and other states is and always has been composed of and consists of the sum of the rate charged by complainant for transportation between points in the State of Ky. and the rate charged by complainant or some other carrier or of plaintiff and such carrier by railroad from one of the said points in the State of Ky. or on the boundary line thereof to points in other states, and complainant says that many of said interstate rates are so made, and have for a long time consisted of the sum of the said intra-state and *intra*state rates, and complainant says that the rate charged by complainant for transportation between points in the State of Ky. cannot be reduced as required by the aforesaid order made by defendants without necessarily and inevitably reducing the said interstate rate to be charged for
153 transportation between the points in the State of Ky. and points in other states; and complainant further shows that by the last amendment to the Act to regulate commerce, to wit, the Act approved June 29, 1906, entitled "An Act to amend an Act entitled 'An Act to regulate commerce,' approved Feb'y 4, 1887, and all acts amendatory thereof, and to enlarge the powers of the Interstate Commerce Commission," the Congress of the United States, as far as the power in it lay, exercised the power conferred upon it by Article I, Sec. 8, Sub-section 3 aforesaid of the Constitution of the United States to regulate the rates of freight power to fix and regulate rates of freight upon interstate traffic by conferring upon the Interstate Commerce Commission the sole power to fifix and regulate rates of freight upon interstate traffic carried on by railroad, and complainant says that the reduction aforesaid of the rates charged by complainant for transportation of freight between points in Ky. required by the aforesaid order made by defendants as aforesaid would necessarily and inevitably work a reduction of the interstate rates to be charged by your petitioner and by your petitioner and other common carriers by railroad for transportation between points in Ky. and points in other States and between points in different states where the traffic passes through the State of Ky. whereby the said defendants would necessaril*h* regulate the said interstate rates and invade the province of the Interstate Commerce Commission and the power conferred upon the Congress aforesaid by the Constitution of the United States aforesaid in violation of said Article I, Sec. 8, Sub-section

3 of said Constitution and in conflict with said Act of Congress approved June 29, 1906 and prevent the full and proper regulation of commerce among the several states by the Congress of the
154 United States, and the instrumentality provided by said Congress for the regulation of interstate commerce, to wit, the Interstate Commerce Commission, in violation of said Art. I, Sec. 8, Sub-Sec. 3 of the Constitution of the United States, and their act be null and void and of no effect.

Wherefore, and in consideration whereof, and for as much as complainant is remediless in the premises at and by the strict rules of the common law and is relievable only in a court of equity where matters of the kind are properly cognizable and relievable, complainant prays that the defendants, Adam T. Siler, McDougal Ferguson and Llewellyn P. Tarlton, individually and as members of duly elected and now composing the Railroad Commission of the State of Ky., and may it please Your Honors to grant unto complainant a writ of subpœna of the United States of America, issuing out of and under the seal of this Honorable Court directed to the said defendants Siler, Ferguson and Tarlton individually and as members composing the Railroad Commission aforesaid commanding them on a day certain to be named therein and under a certain penalty, to be and appear before this Honorable Court and then and there to answer, but not under oath, such oath being expressly waived, all and singular the premises, and to stand to, perform and abide such order, direction and decree as may be made against them in the premises and as shall to Your Honors seem to be meet and agreeable to equity and good conscience; that the temporary injunction heretofore issued in this suit against the defendants to the original bill of complaint and each of them, their employes and representatives and all persons acting or claiming to act by, through or under them, or any of them agreeably to the prayer of said bill be extended to and include and stand against the aforesaid defendants to this amended and supplemental bill, Siler, Ferguson
155 and Tarlton, until the final decree in this suit, and that upon the hearing of this cause and the entry of a decree therein said temporary injunction may be made perpetual, and complainant prays all the relief against the defendants to this amended and supplemental bill prayed by it in its original bill against the defendants thereto; and may it please Your Honors to grant unto complainant such other and further relief as the circumstances of the case require, and to Your Honors shall seem meet, and complainant, as in duty bound, will ever pray.

TRABUE, DOOLAN & COX,
Counsel for Complainant.

EDMUND F. TRABUE,
Of Counsel.

STATE OF KENTUCKY,
Jefferson County, sct:

I, V. C. Yeager, do hereby certify that on this 8th day of Jan. A. D., 1908 personally appeared before me Edmund F. Trabue,

personally known to me, who is of counsel for the complainant in this suit and made oath that the statements contained in the foregoing amended and supplemental bill are true as he verily believes, and that the information upon which the averments of correction of the allegations in the original bill were based was obtained long after the issues in this suit were made up, and that the averments concerning the said matters are supported by the testimony of witnesses who have already testified for complainant before the Master in this suit.

EDMUND F. TRABUE.

Subscribed and sworn to before me by Edmund F. Trabue this the — day and date aforesaid. My commission expires Feb'y 15, 1908.

[SEAL.]

V. C. YEAGER,
Notary Public, Jefferson County, Kentucky.

Filed Jan. 9, 1908, W. G. Chapman, Clerk.

A Copy, Attest:

JOHN W. MENZIES, *Clerk.*
By M. S. BARRETT, *D. C.*

156 Said Opinion of Court filed by order of Court on November 12, 1913 is as follows to-wit:

157 United States District Court, Eastern District of Kentucky.

Filed Nov. 12, 1913. J. W. Menzies, U. S. Clerk.

No. 731.

ILLINOIS CENTRAL RAILROAD COMPANY, Plaintiff,
vs.
HENRY M. BOSWORTH et al., Defendants.

This cause is before me on motion for a preliminary injunction and demurrer to the bill. It is similar in character to that of the Louisville & Nashville Railroad Company case against the same defendants in which I have heretofore handed down an opinion though it does not present all of the questions involved therein. There is a radical difference between the two cases in this, that in that case the board took the position that the part of the company's capital stock in this state is proportionately of more value than the part elsewhere whereas in this case it took the reverse position. The assessment made by the board of plaintiff's franchise in this state for the year 1911 amounted to $4,510,320. The assessment complained of herein amounts to $14,746,857. It was reached in this way. The value of the part of plaintiff's capital stock in this state was fixed at $27,124,240
Deducting the assessed value of the tangible property in this state 12,377,383

Leaves the balance of $14,746,857

The board's record does not state the conclusions which it reached in making the assessment as to the matters regarding which the statute required it to reach conclusions, but only the automatic result of those conclusions, to wit, that the value of plain-
158 tiff's franchise in this state was the sum of $14,746,857. It is known that it fixed the value of the part of its capital stock in this state at $27,124,240 and obtained the value at which it fixed the franchise by deducting therefrom the assessed value of the tangible property in this state only from the notice which it gave to plaintiff of the final assessment and the affidavits of the member of the board filed herein. No complaint seems to have been made by plaintiff of its want of notice of how the assessment was arrived at nor is the absence of such notice made a ground of attack on the assessment complained of. The sole grounds of attack which are made thereon are that the board after fixing the value of the capital stock did not first deduct the value of the entire tangible property before apportioning a part thereof to this state—that it arrived at its valuation of the part of the capital stock in this state by capitalizing the net earnings in this state at 6% and taking 80% thereof—and that it is in violation of the 14th amendment in that it denies plaintiff the equal protection of the laws. The first ground of attack is not well taken as I have held in the Louisville & Nashville Railroad Company case. The second ground of attack is denied by the board. The last ground of attack is well taken but it invalidates the assessment only to the extent that the valuation placed on the part of plaintiff's capital stock in this state exceeds the percentage at which other property is assessed. If as in the Louisville & Nashville Railroad Company case 70 is taken as the proper percentage the amount of the assessment on which the plaintiff should pay taxes is as follows, to wit:

159	70% of $27,124,240	$18,996,968
	Deduct assessed value of tangible property	12,377,383
Leaves a balance of		6,618,585

as the value of the franchise. This is $2,108,265 in excess of the assessment for the previous year. As the plaintiff claimed in its bill that it was liable to no franchise assessment at all, because the value of its entire property did not exceed the value of its tangible property under the erroneous view that the statute required a deduction of same from the value of the entire property no payment has heretofore been made by plaintiff on account of its franchise for the year 1912.

The motion for a preliminary injunction, therefore, is sustained on condition that the plaintiff within thirty days from this date pay the taxes, state and local, on the sum of $6,618,585 and interest at 6% on $4,510,320 from the last date at which either of the other three railroad companies paid state taxes on the previous year's assessment.

The demurrer to the bill is overruled.

This Opinion reported 209 Fed. P. 465" L. & N. vs. Bosworth referred to reported in 209 Fed. P. 380.

160 On November 28, 1913, the following order was made and entered herein, to-wit:

No. 731.

ILLINOIS CENTRAL RAILROAD COMPANY, Complainant,
versus
HENRY M. BOSWORTH et al., Defendants.

Order Granting Temporary Injunction.

(November 28, 1913.)

Court met pursuant to adjournment. Present: Hon. A. M. J. Cochran, U. S. Judge.

This case coming on for hearing upon complainant's motion for a temporary injunction upon the pleadings, exhibits, affidavits and other papers filed by the parties, and the court being sufficiently advised upon argument of counsel, oral and written, delivered its written opinion herein September 22, 1913, upon the questions involved in said motion; and after further oral argument by counsel, on the 12th day of November, 1913.

It is considered, ordered and adjudged that complainant's motion for a temporary injunction be and it is sustained and that the defendants, Henry M. Bosworth, Thomas S. Rhea and Carl F. Crecelius, whether acting individually or as the Board of
161 Valuation and Assesment of Kentucky, be and they are enjoined and restrained from apportioning to any of the County Clerks named in the caption of the Bill of Complaint herein, or any other officers of the cities, counties, towns or taxing districts in the counties mentioned in the Bill of Complaint or any of them the assessment mentioned in said Bill of Complaint which said defendants assumed to make for the year 1912 as therein alleged, or any part thereof, for taxation or for extension of tax rates thereon; that said Bosworth whether acting individually or as Auditor of Public Accounts of said State be and he is enjoined and restrained from certifying to the said County Clerks or any of them or any other officer or officers of the counties mentioned in said Bill of Complaint the aforesaid so-called final assessment; that the said defendant, G. B. Likens, whether acting individually or as Assistant Auditor, be and he is likewise enjoined as is the said Bosworth; that the defendant, James Garnett, whether acting individually or as Attorney General of the State of Kentucky, and the defendants, Charles H. Morris, M. M. Logan and O. S. Hogan, whether acting individually or as Assistant Attorney General of the State of Kentucky; and Robert B. Franklin, whether acting individually or as Commonwealth's Attorney, and Wiley C. Marshall, whether acting individually or as County Attorney for Franklin County, Ky., be and

they are and each of them is enjoined and restrained from instituting or prosecuting any suit or procuring any indictment, warrant
162 or proceeding in court or at law to coerce the payment by complainant of any taxes upon the assessment aforesaid, or any part thereof, whether on behalf of the Commonwealth or any county, city, town or taxing district, until the further order of this court; Provided, that on or before the 12th day of December, 1913, the complainant pay or cause to be paid to the Commonwealth of Kentucky as taxes upon the franchise of the complainant for the year 1912 the State taxes for said year at the then current rate upon an assessment of $6,609,585 and pay to the proper collecting officers of the counties, cities, towns and taxing districts of the counties into or through which the railroad of complainant runs, as mentioned in its Bill of Complaint herein within thirty (30) days after the said Auditor of Public Accounts of the Commonwealth of Kentucky shall have certified to the proper officers of said subdivisions the amounts to which they respectively may be entitled upon the basis of the assessment aforesaid of $6,609,585 and notice to complainant of such amounts so certified and of such certification, the taxes so certified as payable to them.

And the said Henry M. Bosworth, Auditor, and G. B. Likens, Assistant Auditor, are enjoined and commanded to refrain from entering in account as a demand payable at the treasury of the Commonwealth of Kentucky any amount of taxes based on said assessment of complainant's franchise which said Board assumed to make for the year 1912 at any greater total amount than the aforesaid $6,609,585 and to refrain from making any report to the Attorney General of any alleged delinquency arising from the failure of com-
163 plainant to pay taxes to the State of Kentucky based on said assessment for franchise taxation on behalf of said State for 1912 and to refrain from causing proceedings of any kind to be instituted against complainant because of its failure or refusal to pay franchise taxes for the year 1912 based upon said assessment, and the defendants aforesaid, whether acting individually or assuming to act in their official capacities respectively, are enjoined and commanded to refrain from instituting or prosecuting any proceeding or proceedings against the complainant whether by indictment or civil action or otherwise to recover taxes or penalties because of any alleged delinquency of complainant in failing to pay taxes based upon the assessment or valuation of its franchise for taxation which said defendants Bosworth, Rhea and Crecelius assumed to make.

And this temporary injunction shall be and remain in full force and effect until the further order of this court; and is made upon condition that said complainant pay as aforesaid the taxes as aforesaid upon the basis of said assessment of $6,609,585.00 within the times above specified.

164 On January 8, 1914 defendants filed the following motion herein, to-wit:

#731.

ILLINOIS CENTRAL RAILROAD COMPANY, Complainant,
vs.
HENRY M. BOSWORTH et al., Defendants.

Come the defendants, and move the court to grant them further time, until the 15th day of February, 1914, in which to prepare and file their answer in this action.

Wherefore, the defendants pray that their request be granted, and for all proper relief.

JAMES GARNETT,
Attorney General.

On January 8, 1914 the following order was entered herein to-wit:

#731.

ILLINOIS CENTRAL RAILROAD COMPANY
vs.
H. M. BOSWORTH et al.

On motion of the defendants they are granted further time until February 15, 1914, in which to prepare and file their answer herein.

165 On February 14, 1914, defendant- filed answer herein in words and figures as follows, to-wit:

District Court of the United States for the Western District of Kentucky.

No. 731.

ILLINOIS CENTRAL RAILROAD COMPANY, Complainant,
versus
HENRY M. BOSWORTH, THOMAS S. RHEA, CLARK F. CRECELIUS, Individually and as Constituting the Board of Valuation and Assessment of the Commonwealth of Kentucky; Henry M. Bosworth, as Auditor of Public Accounts of the Commonwealth of Kentucky.

Answer.

(Filed February 14, 1914. J. W. Menzies, U. S. Clerk.)

1. The defendants, Henry M. Bosworth, Auditor of the State of Kentucky, Thomas S. Rhea, Treasurer of the State of Kentucky and C. F. Crecelius, Secretary of the State of Kentucky, constituting the Board of Valuation and Assessment of the Commonwealth of Kentucky admit that the Illinois Central Railroad Company is and at all times hereinafter mentioned was a corporation created by and organized pursuant to the laws of the State of Illinois and not under

nor pursuant to the laws of the State of Kentucky, and a cor-
166 poration and citizen of the State of Illinois and not of the State of Kentucky and that the defendants, Bosworth, Rhea and Crecelius and each of them are citizens of the State of Kentucky and inhabitants of the respective districts of Kentucky as set forth in complainant's Bill.

2. The defendants, Bosworth, Rhea and Crecelius, admit that by virtue of office they now hold, they do now and at all times hereinafter mentioned constitute the Board of Valuation and Assessment of the State of Kentucky and at all times said Bosworth was Auditor of Public Accounts of said State.

3. The defendants admit complainant operated and at all times hereinafter mentioned operated as a common carrier of passengers and freight a unified system of railroad extending into and through the States of Kentucky, Tennessee, Mississippi, Louisiana, Illinois, Indiana, Iowa, Wisconsin, Minnesota, Nebraska and South Dakota and that the total mileage operated, owned, leased or controlled by complainant at any time time during the years 1911 or 1912 was 3,986.75 miles, and that the total mileage operated, owned, leased or controlled in the State of Kentucky in said period of time was 563.79 miles, and state the ratio of mileage of complainant owned, operated, leased or controlled in the State of Kentucky to the mileage of complainant owned, operated, leased or controlled in Kentucky or elsewhere is 12.3 per cent.

4. The defendants admit that between June 30, 1911, and October 1, 1911, complainant duly made and delivered to defendant Bosworth, auditor aforesaid, a verified statement or report as
167 prescribed by the Kentucky Statutes, especially Section 4078 and succe-ding sections setting out therein information required by said statutes. The defendants deny that complainant at the request of said Board furnished additional statements and gave additional information to said Board. Complainant did file with the Board of Valuation and Assessment certain exhibits at the hearing on its tentative assessment. The defendants admit the said report shows among other things the following information in regard to results of operation of the whole line of Illinois Central Railroad Company and that part or portion of said lines located in Kentucky. Said information is as follows:

	I. C. system.	Kentucky.
Operating Revenue	$60,977,031.49	$7,622,738.49
Operating Expenses	43,856,228.13	5,068,952.56
Net Operating Revenue	17,120,803.36	2,553,785.93
Total Net Revenue	17,064,339.12	2,552,922.14
Taxes	2,671,290.22	225,153.72
Operating Income	14,393,048.90	2,327,768.42
Other Income	6,742,438.50	85,260.18
Gross Corporate Income	21,135,487.40	2,413,028.60
Rents accrued for Lease of Other Roads	3,748,071.01	12,039.70
Other Rents	531,720.03	278,018.83
Net Corporate Income	11,315,343.92	1,225,291.79

The defendants admit said report showed the balance sheet of the company as of June 30, 1911, showing the grand total of assets of said company to be $330,139,534.04 and said report further showed that
the Illinois Central Railroad Company was a corporation of
168 the State of Illinois and was not incorporated in the State of
Kentucky. The defendants admit that said report further showed the total mileage of complainant, operated, owned, leased or controlled in Kentucky or elsewhere and that the length of same and the ratio thereof in Kentucky is as set forth in paragraph 3 of this Bill; the defendants admit that said report further showed that the entire net and gross income or earnings received by said corporation in said State and out of said State on business done in said State for twelve months next before June 30, 1911, shows gross income $7,707,134.88. The defendants deny that said report showed the net income or earnings of complainant within said State and out of said State on business done in said State for twelve months next before June 30, 1911, was $1,225,291.79 and aver that said report showed that the entire net income or earnings received by complainant in said State and out of said State on business done in said State for twelve months next before June 30, 1911, was $2,413,-028.60. The defendants admit that said report showed the entire gross and net income or earnings received by complainant on business done in the State of Kentucky and elsewhere for the same length of time was gross income, $67,663,005.75 but denies the net income earnings of complainant for the same period of time was shown to be only $11,315,345.92. The defendants deny the said report and other information furnished by complainant to the said Board of Valuation and Assessment showed that the complainant owned
tangible property of great value situated in many States out-
169 side of the State of Kentucky and intangible property of
great value in railroad property taxable in other States and not taxable in the State of Kentucky. The defendants say said report did not show the value of complainant's property in each of the States through which it operates lines of railway, but said report did state facts which enabled the Board to ascertain the value of its entire line. The defendants admit that acting as the Board of Valuation and Assessment of the State of Kentucky on April 12, 1912, it fixed and made a preliminary assessment of complainant's franchise at $21,500,500.00 and the auditor directed that complainant be given notice of such assessment in the words and figures set forth in paragraph 4 of the Bill of Complaint. The defendants admit that during the year ending June 30, 1911, the market value of the shares of stock and funded debt of its system not held in the treasury of the company such market value being based on the highest quotations of the New York Stock Exchange during the year ending June 30, 1911, as reported by the Commercial and Financial Chronicle, was $306,934,100.00. The defendants are without information and therefore deny the value of the physical or tangible property of the entire system of the complainant's lines excluding the State of Kentucky was not less than $320,000,000.00. The defendants admit the assessed value of the tangible property of complainant in Ken-

tucky was $12,377,383.00. The defendants deny that $15,757,-767.55 was the true net income of the system operated by complainant as an operating company.

170 5. For answer to statement of complainant's Bill that for previous years, complainant had made and delivered the reports required by the Statutes of Kentucky and that said Board of Valuation and Assessment had assessed complainant's franchise under said statutes for said years respectively far nearer the real value of said franchise than the assessment made by the present Board, the defendants say they are without information as to truth of those statements, but the records in the office of the Auditor of Public Accounts of the State of Kentucky will disclose whether complainant had made and delivered the reports required by the statutes of the State of Kentucky for years previous to June 30, 1911, and the records of said office will show whether the predecessors of defendants in office valued and assessed complainant's franchise for said years in the sums or amounts showed by complain-t in its Bill.

The complainant also states in its Bill that complainant in each and every instance aforesaid submitted to said assessments and paid its taxes so assessed within the time allowed by the law although said assessments for each of said years far exceeded the value of the complainant's franchise in Kentucky. The defendants say if complainant's franchise for the years of 1908 to 1911, inclusive, was valued and assessed at the sums or amounts set forth in Bill of Complain*ant*, and the assessment of its tangible property by the Railroad Commission of the State of Kentucky for said years was no greater than the assessment thereof for the year of 1912, and the property of complainant in Kentucky was during said time

171 as valuable as it was in the year ending June 30, 1911, as stated by complainant in its Bill, then the said assessment of complainant's franchise for said years was far too low and the defendants are not surprised at the submission of complainant to the assessment made for said years and the payment of the taxes levied thereon. Complainant's submission to the taxing authorities of the State under the circumstances for the years in question was prudent and is evidence of the good judgment usually exercised by the officers of well managed corporations.

The defendants, Bosworth, Rhea and Crecelius, did not advance the assessments of complainant's franchise for the year of 1912, over previous years because they were driven thereto by exigency, expediency or otherwise. Said defendants constituting the Board of Valuation and Assessment of the State of Kentucky, fixed the final assessment of complainant's franchise for the year 1912 at $14,746,857.00, because the evidence before the said Board, as to the value of the corporate franchise of complainant convinced the members of said Board that a lower assessment thereof would be an unjustifiable and willful violation of official duty.

6. The defendants deny the assessment of complainant's franchise for the year of 1912 at $14,746,857.00 was excessive, exorbitant and extravagant — amount, and deny that the franchise of complainant was fixed at said sum by said Bosworth, Rhea and Crecelius as the

value of complainant's franchise for Kentucky and so assessed by them not because it was or is a fair amount to be fixed as
172 such assessment, but arbitrary and without reference to the real value of such franchise and deny the franchise of complainant was assessed at said amount or sum because of the financial straits of the Commonwealth of Kentucky and the circumstances attending said action of these defendants in assuming to act as the Board of Valuation.

The defendants are without knowledge and therefore deny that since the assessment of this complainant's franchise for the year 1911 was made, the State of Kentucky has become financially embarrassed, due to excessive expenditures and extravagant appropriations made by the General Assembly of Kentucky at its session during the months of January, February and March, 1912, that there are now outstanding and unpaid interest bearing warrants of the Commonwealth of Kentucky amounting to more than $2,250,000.00; that the State has no funds whatever, available to pay same; that the General Assembly at its last session, as before stated, voted extravagant appropriation- for numerous public purposes, and also enacted a law providing pensions for veterans of the Confederate Army, which pensions in the aggregate will amount to a vast sum of money, largely more than $—; that said General Assembly made no provision whatever for raising money by taxation for State purposes to meet the appropriations made by it for Confederate pensions or other purposes; that it declined to increase the rate of taxation for State purposes because of the odium attaching to the increas-
173 ing of tax rates, and that when the problem thus presented, was considered and the question raised in the General Assembly as to how funds should be provided to meet the appropriations made by it at its session aforesaid, it was planned by various officials of the State and members of the Legislature to enact a Bill for the assessment of public service corporations, including the railroad companies to the end that a heavier burden of taxation might be devolved upon them, and the necessary funds raised for the purposes of the State without increasing the burden of taxation upon natural persons and the citizens of the State generally, other than public service corporations; that accordingly a Bill to that effect providing for a Public Utilities Commission for the assessment of railroads and other public service corporations *were* introduced and pressed for passage in the Legislature. The defendants deny that the enactment of said Bill was vigorously opposed and its defeat secured by some of the defendants herein, then and now composing the State Board of Valuation and assessment; defendants state on information and belief the enactment of said Bill was vigorously opposed and its defeat secured by the agents and employes of the various Railroad Companies operating lines of Railway within the State of Kentucky, and other public service corporations doing business in Kentucky. These defendants deny that they or either of them publicly or privately assured the members of the General Assembly of the State of Kentucky for the year of 1912, of their ability and willingness to make such assessments of the railroads and other

public service corporations, that would provide the State with
174 funds from taxation upon the franchise of the railroads and other public service corporations sufficient in amount to pay off the accumulated debt of the State within four years or during the term of office of the present incumbents of such State officers respectively. These defendants and each of them deny that pursuant to and in accordance with such assurances and declarations, or any assurance and declaration, the defendants composing the State Board of Valuation and Assessment proceeded to carry out their assurances given to the members of the General Assembly, by enormously increasing the franchise assessments of the leading public service corporations in the State of Kentucky so as to increase their respective burdens of taxation as follows:

175

Name of corporation.	Franchise assessment for 1911.	Franchise assessment for 1912.
Illinois Central	$4,510,320	$14,746,857
L. & N. R. R.	11,899,200	45,428,074
C. & O. R. R.	2,745,350	18,798,630
Q. & C. R. R.	3,559,320	10,674,200
L., H. & St. L.	1,090,200	1,500,000
Southern Railway	1,011,984	1,500,000
K. & I. Terminal Co.	529,600	1,429,600
Lexington and Eastern	138,800	250,000
Mobile and Ohio	406,276	600,000
Glasgow	73,500	113,500
Ohio Valley	201,750	283,328
Ashland Coal & Iron	242,660	343,000
Pennsylvania Terminal	.....	50,000
Louisville & Southern Ind.	4,982	20,000
Louisville Railway Company	6,800,270	8,111,125
Louisville Interurban	.....	1,299,750
S. Covington & Cincinnati	1,500,000	5,000,000
Maysville Street Railway	25,000	60,000
Union Lt., Ht. & Pr. Co.	1,600,000	2,500,000
Kentucky Electric, Louis	300,000	550,000
Louisville Lighting Co.	2,500,000	3,100,000
The Pullman Company	300,000	600,000
Adams Express Company	650,000	900,000
American Express Company	150,000	200,000
Southern Express Company	250,000	350,000
Western Union Telegraph	539,000	618,000
Postal	34,000	82,000

The defendants and each of them say it is true the above-mentioned companies were assessed for the year of 1911, and the year of 1912, at the sums set opposite the name of each of the said companies for each of those years. The defendants and each of them state that in the performance of their duty while acting as
176 members of the Board of Valuation and Assessment for the year 1912, in addition to assessing the above corporations,

they passed upon and assessed the franchise of nearly three hundred other corporations subject to a franchise tax in the State of Kentucky and that in many other instances than those cited in the Bill of Complain*ant* the assessment of the franchise of said corporations for taxation for the year of 1912 was increased over the assessment thereof for the year of 1911. The defendants say that the increase in the assessments of franchise of the various corporations mentioned in the Bill of Complain*ant*, and those not mentioned, was not made because of or for any of the reasons stated in the Bill of Complain*ant*, but because of and by reason of the fact that the reports of said corporations made for the purpose of enabling it to determine and fix the value of the respective corporate franchise of said companies, subject to taxation in Kentucky, and other evidence before the Board disclosed the fact and showed that the franchise of all of said corporations should be assessed at the sum or amount at which they were assessed by this Board for the year of 1912, and the assessment of the corporate franchise of said companies for previous years had been grossly inadequate and wholly out of proportion to their real value. The defendants state that all of the above specifically mentioned corporations, whose franchise assessment for the year 1912 was increased over the franchise assessment of the year 1911, and all other companies assessed by this Board for 1912, except eight recognized the fair-
177 ness and justice of the assessments thereof made by the defendants, composing the Board of Valuation and Assessment for the State of Kentucky for the year 1912, and paid the taxes due thereon to the State, counties and cities in which the franchise of said corporations were exercised. That only eight of the above-mentioned companies including complainant contested the validity of the assessments made by this Board for the year 1912, and instituted suits enjoining the collection of taxes due thereon. That since the institution of said suits one of the eight of the complaining companies has withdrawn its suit and paid the taxes on the assessment made against it by this Board for the year of 1912.

The defendants say before they proceeded to the work of assessing the franchise of various public service corporations in the State of Kentucky, including complainant and other railroad companies for the year 1912, the Auditor of Public Accounts of the State of Kentucky, one of the defendants herein, employed one John L. Rich, a lawyer of Kentucky, learned in the law governing the assessment of franchise in this State to make up for the use of the Board and report to the Board all the facts shown by reports of said company and all material and competent evidence available, having a bearing upon the value of the corporate franchise of complainant and all other companies, in the State, in order to enable the Board to fairly, expeditiously, correctly and justly assess the franchise values of all corporations which said Board were under the law required to assess for the year of 1912. The defendants and each of them deny that the work of investigating the value of complainant's franchise as-
178 sessable in Kentucky was delegated by defendant's members of the State Board of Valuation and Assessment, to one Goebel

and said Rich, or to other persons, and was largely, if not wholly, done by them and their recommendations adopted by the Board as its conclusions without proper or any consideration by the members of the Board as to the requirements of the law with respect to the elements lawfully to be considered in determining the fairness of such franchise for assessment in Kentucky. The defendants say that Justus Goebel, mentioned by complainant, volunteered his services to the Auditor of Public Accounts to assist the said Rich in investigating and collecting the facts and data having an evidential bearing on the value of franchises of the various corporations exercising franchise in the State of Kentucky and which were asssessable by this Board for the year of 1912. The defendants and each of them, deny that they adopted the recommendations made by said Goebel and said Rich as their conclusions and deny that they delegated the power vested in them as members of the Board of Valuation and Assessment to assess franchise to said Goebel and said Rich or anyone else.

7. The defendants admit that it is true that in fixing the value of complainant's franchise they did not fix the value of complainant's entire capital stock and then deduct therefrom the value of complainant's total tangible property in and outside of the State of Kentucky and distribute or apportion the residue thus resulting according
179 to mileage or the length of complainant's railroad within the State of Kentucky as compared with its total mileage of rails in and outside of said State.

The defendants deny that in fixing the value of complainant's franchise that in conjunction with said Goebel and Rich or anyone else, and in accordance with the methods by them suggested and proposed, — took the so-called net earnings of complainant for the State of Kentucky for the year ending June 30, 1911, and for the next preceding year and averaged them and capitalized the result or amount thus secured at six per cent per annum and assume to equalize the amount thus obtained, with other property in the State of Kentucky, by taking eighty per cent thereof as the value of complainant's franchise in Kentucky. The defendants have no information the real estate of the State of Kentucky, was generally, systematically, intentionally and habitually assessed at not exceeding sixty per cent of its fair cash value and therefore deny that the real estate of the State of Kentucky for the year in question was so assessed.

The defendants say the Constitution and the Statute of the State of Kentucky provide that all property in the State not exempted from taxation by the Constitution shall be assessed for taxation at its fair cash value, estimated at the price it would bring at a fair voluntary sale. That Section 172 of the Constitution of the State also provides:

"And any officer or other person authorized to assess values for taxation, who shall commit any willful error in the performance of his duty shall be deemed guilty of misfeasance, and upon con-
180 viction thereof shall forfeit his office and be otherwise punished as may be provided by law."

The defendants further say that the real estate of the State of Kentucky was assessed for the year of 1912, by officials of the State whose duty it was to assess the real estate therein, and that defendants

were not charged with the duty of assessing real estate in Kentucky for taxation, for the year of 1912. The defendants say even if it is true that the real estate in the State of Kentucky is assessed at only sixty per cent of its fair cash value estimated at the price it would bring at a fair voluntary sale, it would be unlawful for the defendants to intentionally or knowingly assess the franchise of complainant and the franchises of all other corporations at sixty per cent of their fair cash values estimated at the price they would bring at a fair voluntary sale, and if defendants should knowingly and intentionally or willfully do so, they would under the law of Kentucky be guilty of the crime of misfeasance, liable to indictment and conviction, which would subject them to heavy penalties and in addition thereto work a forfeiture of office.

The defendants say complainant is attempting by its Bill to invoke the power of a Court of Equity to compel them to do an unlawful act viz., assess its franchise and the franchises of all other corporations, at less than their fair cash value which action on the part of defendants would subject them to the pains and penalties of the law as aforesaid and in addition thereto would work a forfeiture of their office. Therefore defendants move to dismiss so much of the
181 complainant's Bill as seeks to compel defendants to assess complainant's franchise at less than its fair cash value, or so much thereof as seeks to enjoin the officers of the State from collecting taxes due on the assessment on complainant's franchise for 1912 made by the defendants because the franchise of complainant was not assessed as so low an amount as would equal sixty per cent of its fair cash value.

The defendants deny that they assessed complainant's franchise in the State of Kentucky for the year of 1912, arbitrarily and without reference to its value, thereby denying complainant the equal protection of the law and deny that said assessment constituted the taking of complainant's property without due process of law and in violation of the Constitution of Kentucky and the Fourteenth Amendment of the Constitution of the United States.

8. The defendants admit that after the tentative assessment of the complainant's franchise was made and before any final assessment thereof was made, the complainant through its representatives within the time permitted by law appeared before said Board, at Frankfort, Ky., and protested against the tentative assessment which had been made on its franchise. Defendants say that said Goebel and Rich were present at said hearing. That said Goebel was present on his own volition as a citizen of the State of Kentucky; that the meetings and hearings of the Board to determine the question of the value of the franchise of various corporations in the State of Kentucky, were, under the law open to the public and not private, and any
182 citizen or any number of citizens of the State or anyone else, had a right to be present at said meetings and were then and are now entitled under the law to present for the consideration of the Board any information or evidence possessed bearing upon the value of franchises corporate exercised in the State; and were entitled to express their views to the Board upon the question of the value of

the franchise of any corporation subject to a franchise tax in Kentucky. That said Rich was present as an employe of the Board for the purpose of making such calculations as the Board directed him to make in order to ascertain the value of the franchise of complainant and the said Rich, at the request of the members of said Board interrogated and questioned the representatives of the complainant at said hearing for the purpose of elucidating and bringing out all the facts that would in any way aid the Board in arriving at a correct value of the corporate franchise of complainant subject to taxation in the State of Kentucky for the year of 1912. The defendants say the representatives of complainant appearing before the Board at said meeting did not protest or object to the presence of said Goebel or said Rich at said hearing nor did the representatives of complainant then question the right of said Goebel and said Rich to be present at its hearing. The defendants say that it is true the representatives of complainant produced certain statements in writing at said hearing and made statements and submitted oral evidence or statements as to the value of complainant's franchise in Kentucky for the year of
183 1912. A copy of complainant's written protest and exhibits filed before said Board on May 10, 1912, and thereafter on the — day of ——, 1912, are filed herewith and made part hereof, marked Exhibit "A" and Exhibit "B." The defendants say they gave full, due and careful consideration to all evidence and statements and writings presented and introduced by the representatives of complainant at said hearing and after due consideration thereof and after fully considering all the evidence before the Board including its franchise report made pursuant to the Kentucky Statutes, and thereafter the defendants constituting the Board of Valuation and Assessment of the State of Kentucky on the 31st day of August, 1912, made and fixed the final assessment of complainant's franchise in Kentucky at $14,746,837.00. A copy of the resolution duly presented by a member of said Board and adopted by said Board at a meeting, regularly called by the Chairman of said Board for the purpose of assessing complainant's franchise in Kentucky is filed herewith and made part hereof, marked Exhibit "C."

9. The defendants for answer to Paragraph 9 of complainant's Bill move the court to dismiss same.

10. The defendants move the court to dismiss Paragraph 10 of complainant's Bill.

11. The defendants deny the Board of Valuation and Assessment fixed and determined the value of complainant's corporate franchise in Kentucky by capitalizing its net income derived in said State;
184 the defendants deny that a more favorable rule or basis of assessments was applied to other railroad companies operating lines of railway within and without Kentucky in assessing the corporate franchise of said company than was applied to complainant in fixing and assessing its corporate franchise in Kentucky for taxation for the year 1912. The defendants say the Statutes of Kentucky relating to the assessment of corporate franchise of railroad companies doing business in Kentucky, required said companies

operating lines of railway within and without the State to report to the Auditor of Public Accounts among other things, for the consideration of the Board the gross and net earnings of said companies within and without the State but if said companies fail to furnish such information in their report to the Auditor of Public Accounts, the Board, was and is without power or authority to compel them so to do. That it was the duty of said Board, notwithstanding the failure of said companies to report, and furnish all the information required to be reported by the statute to assess for taxation the corporate franchise of all companies owning and exercising franchise in the State subject to taxation, and in the performance of this duty said Board had to base its judgment and conclusion on the information available. The defendants say that all corporations operating lines of railway within and without the State of Kentucky during the year ending June 30, 1911, reported to the Auditor of Public Accounts their entire gross and net earnings for said period, but that some of said companies failed to report to the Auditor of
Public Accounts the gross and net earnings derived by said
185 companies in Kentucky. The defendants say that in assessing and fixing the value of the corporate franchise of all the railroads operating lines of railway within and without Kentucky for the year ending June 30, 1911, they considered and took into account in connection with other facts before them, the gross and net earnings of said companies, within and without the State when that information was available.

In response to the prayer of complainant's Bill calling upon the defendants to make answer thereto and to state in said answer the method whereby said Board reached the final assessment of complainant, the defendants say that in fixing and ascertaining the value of the corporate franchise of complainant and all other corporations, operating lines of railway within and without the State of Kentucky during the year ending June 30, 1911, the Board of Valuation and Assessment employed and adopted the following general rule or method.

In ascertaining the value of the corporate franchise of railroads operating lines of railway in Kentucky and elsewhere the Board of Valuation and Assessment first ascertained the fair cash value of the capital stock or all the assets of the corporation under consideration. In ascertaining the value of the entire capital stock or all the property of a corporation, the Board found the market value of the outstanding shares of stock and funded debt of said corporation; and also capitalized the annual net income or earnings of said corporation at six per cent. That is to say when ascertaining the
value of the capital stock by the net earnings plan, they
186 ascertain- and found what amount invested at six per cent would yield a sum or amount annually equal to the annual net income or earnings of said corporation; and after determining the value of the entire capital stock or property of the corporation as aforesaid the said Board then ascertained the proportion thereof which the mileage of said company in this State bears to the mileage of said company within and without the State, which result was

considered as showing the entire value of that part or proportion of the capital stock of the company in Kentucky, and from the value of this proportion or part of the capital stock so found was deducted the assessed value of all tangible property of said company assessed in this State or in the counties where situated. The remainder thus found was the value of the corporate franchise of the corporation, subject to taxation in this State.

In finding the value of the entire capital stock of complainant the defendants, from the reports and exhibits of complainant and the evidence before the Board ascertained the aggregate market value of its outstanding shares and funded debt; and also capitalized the net earnings of complainant for the year ending June 30, 1911. The Board also considered the statements of complainant's counsel, with reference to the value of its capital stock and upon consideration of the foregoing evidence, the Board was of opinion, believed and found the fair cash value of the entire capital stock or all the assets or property of complainant used in its business as a carrier of freight and passengers, during the year ending June 30, 1911, was $300,000,000. The Board next ascertained and found the
187 ratio of mileage owned, operated, leased or controlled by complainant in Kentucky to the mileage, owned, operated, leased or controlled within and without Kentucky and found from the evidence the ratio of mileage of complainant in Kentucky to the entire mileage of its system was 12.3%. The Board then apportioned to the State of Kentucky that proportion of the total assets or capital stock of complainant which its mileage in Kentucky bore to its mileage within and without Kentucky and considered the result thus obtained in fixing the value of the corporate franchise of complainant in Kentucky. The result obtained when the capital stock of complainant was apportioned to Kentucky on a mileage basis showed the value of the capital stock or property of the complainant in Kentucky was $36,900,000.00. The defendants also considered the net and gross earnings of the complainant within and without Kentucky as its report to Auditor for year ending June 30, 1911. Said report showed and stated that complainant earned in Kentucky during said year the sum of $2,413,028.00 and said report and exhibits further showed the ratio of gross earnings of complainant in Kentucky was equal to 12.4% of the gross earnings of its entire system. Capitalizing the earnings received by complainant in Kentucky for said year at six per cent gave as a result $38,779,400.00. The net earnings of complainant in Kentucky for the year ending June 30, 1910, were shown in the franchise report of complainant to the Auditor for that year to be $—, capitalizing
the average net earnings of complainant in Kentucky for said
188 years gave the result of $—. The defendants considered the result obtained by capitalizing the net income derived by complainant in Kentucky as having an evidential bearing on the value of that part or proportion of complainant's capital stock in Kentucky. After considering the result of the foregoing calculations and all the evidence, reports and exhibits offered by complainant, the defendants acting as the Board of Valuation and Assessment

ascertained thereby the mileage proportion of the value capital stock of complainant in Kentucky was $36,900,000.00. And upon consideration of the value of that proportion of the capital stock of complainant which the mileage of complainant in Kentucky bears to the mileage of complain-t within and without Kentucky, the said Board, to the end that no injustice might be done complainant, by the Board over-valuing its franchise for taxation, at the same time being anxious and determined to faithfully discharge their official duties as assessors, fixed and determined the value of that part of proportion of the capital stock of complainant in Kentucky at $27,124,240.00, from which sum was deducted the assessed value of tangible property of complainant in Kentucky, to-wit, $12,377,-383.00, and the remainder thus found, to-wit, $14,746,857.00 was adjudged and determined by the said Board to be the value of complainant's corporate franchise, subject to taxation in Kentucky.

The defendants say the statements contained in the amended Bill of complainant filed November 12, 1913, do not state sufficient to constitute a cause of action against defendants, hence de-
fendants move the court to dismiss or strike out said amend-
189 ment to complainant's original Bill.

Without waiving its motion to strike out the amendment of complainant to its original Bill, defendants state they are without information and therefore deny that all the property in the State of Kentucky for the year 1912, was assessed at not exceeding 48.3% of its fair cash value. And defendants say they are without information that the ratio of assessed value to actual fair cash value of taxable property has continually declined in Kentucky since the year 1900, and they say they are without information and therefore deny that the percentage of actual fair cash value represented by the assessed value for the year 1912, was and is less than 48.3%. And defendants further answering, say they are without information and therefore deny that the taxable property in Kentucky for the year 1912 was generally, systematically, intentionally and habitually assessed at not exceeding 48.3% of its fair cash value.

Wherefore, the defendants, Bosworth, Rhea and Crecelius, having fully answered herein, pray that the Bill of complainant and its amendments thereto be dismissed and for costs herein incurred and for all proper and equitable relief, to which it may appear they are entitled upon the final hearing of this cause.

JAMES GARNETT,
Attorney General.
M. M. LOGAN,
Assistant Attorney General.
JOHN L. RICH,
Special Counsel.

190 The defendant, H. M. Bosworth, says the statements in the foregoing answer are true as he verily believes.

H. M. BOSWORTH.

Subscribed and sworn to by H. M. Bosworth before me this February 12, 1914.

My Commission expires January 15, 1916.

[SEAL.] H. B. WARE,
Notary Public, Franklin County, Kentucky.

191 March 10, 1914 the following order was made and entered herein to-wit:

#731.

ILLINOIS CENTRAL RAILROAD COMPANY
vs.
H. M. BOSWORTH et al.

By agreement of parties by their attorneys the above entitled case is continued until April 16, 1914 at 9:30 A. M.

On day following to-wit on April 16, 1914 the following order was made and entered herein, to-wit:

#731.

ILLINOIS CENTRAL RAILROAD COMPANY
vs.
H. M. BOSWORTH et al.

Came plaintiff in above entitled cause and filed an Amended Bill, to which defendants object and save exceptions and this cause is now set for hearing on May 4, next at 2 P. M.

Said amended Bill of Complaint filed April 16, 1914 is as follows, to-wit:

192 No. 731.

ILLINOIS CENTRAL RAILROAD COMPANY, Complainant,
versus
HENRY M. BOSWORTH, THOMAS S. RHEA, and C. F. CRECELIUS et al., Defendants.

Amended Bill of Complaint.

(Filed April 16, 1914. Jno. W. Menzies, Clerk, by Chas. N. Wiard, D. C.)

Complainant, by leave of court, amends its bill and withdraws the statement in paragraph 7 of its Bill that the defendants, Bosworth, Rhea and Crecelius, in conjunction with the said Goebel and Rich, and in accordance with the methods by them suggested and proposed, took the so-called net earnings of complainant for the State

of Kentucky for the year ending June 30, 1911, and for the next preceding year, and averaged them and capitalized the result or amount thus secured at six per cent per annum, and assumed to equalize the amount thus obtained with other property in the State of Kentucky by taking eighty per cent thereof as the value of complainant's franchise in Kentucky.

Complainant avers that in the assessment which the said defendants, Bosworth, Rhea and Crecelius, assumed to make, as in
193 complainant's original Bill alleged, the said defendants included and assessed for taxation in the State of Kentucky stocks, bonds, cash, notes, advances and miscellaneous properties aggregating in value $54,300,746.49, none of which was ever in Kentucky or had any situs there, but all of which were located outside the State of Kentucky on June 30, 1911, and had never been in the said State of Kentucky, nor had any connection whatever with the business of transportation carried on by complainant, and that none of said stocks, bonds or other properties covered or represented the physical railroads or other properties operated by complainant, and the inclusion by said defendants of said properties aggregating $54,300,746.49 was an assumption by the said defendants acting in the name of the Commonwealth of Kentucky to tax property located and having its situs outside the State of Kentucky, and constituted taking and depriving complainant of its property without due process of law, and in violation of the Fourteenth Amendment to the Constitution of the United States.

Complainant further states that in the so-called assessment which the said defendants, Bosworth, Rhea and Crecelius, assumed to make of complainant's franchise for the year 1912, as averred in complainant's original Bill, the said defendants in violation of the Fourteenth Amendment to the Constitution of the United States deprived the complainant of its property without due process of law in including in said assessment of property located in the State of
Kentucky the value of tangible property situated in other
194 States, including terminals, land, roadbed and real estate of every character used for railroad purposes, the same being of much greater value, mile for mile and acre for acre, outside the State of Kentucky than in the State of Kentucky, and that thereby the said defendants erroneously assessed the property of complainant in the State of Kentucky a sum of not less than $14,391,000.00 over and above the value which they would otherwise have found and assessed against the complainant.

Complainant further states that in making their said assessment the said defendants made the following mistakes and errors:

1. In ascertaining the market value of the outstanding shares of stock and funded debt of the said corporation, the said defendants, instead of using the average price of the capital stock during the year, used the highest price during the entire year at which any of the shares of the capital stock of the complainant was sold, and, instead of using the actual value of the bonds secured upon the railroad operated by the claimant, they used the par value of the said bonds, whereas in many instances the bonds were worth

less than par, and by the said errors in computing the stocks and bonds an over-estimate of $10,684,581.00 was made.

2. In capitalizing what the said defendants considered to be the net earnings of the system of railroads operated by the complainant, by mistake the said defendants capitalized the gross corporate income of the complainants, instead of capitalizing as they should have done the "Operating Income" of the complainant, plus
195 such portion of its "Other Income" as was derived from "Railroad Operations," less "Other Rents," whereby a mistake of approximately $72,659,700 too much was made.

Complainant says that six per cent is a rate of interest too low to constitute a proper basis upon which to capitalize net earnings, and that on account of the risk involved of bad years and of reduced rates, the hazards of the business, the increase in the cost of wages and supplies, the burden of increased taxes, full crews, workmen's compensation for injuries, outlays for the construction of depots and grade crossings, and other objects which do not increase revenue, no basis less than eight per cent affords any just criterion for computing value on the basis of capitalizing net earnings.

Wherefore complainant prays as in its Bill of Complaint and for all proper relief.

BLEWETT LEE,
TRABUE, DOOLAN & COX,
Counsel for Complainant.

196 On day following to-wit on May 4, 1914 the following order was made and entered, to-wit:

United States District Court for the Eastern District of Kentucky.

Nos. 731 and 769.

ILLINOIS CENTRAL RAILROAD COMPANY, Plaintiff,
versus
H. M. BOSWORTH, etc., Defendants.

The above-entitled causes, Nos. 731 and 769, having been set for final hearing, on this date came the plaintiff therein by Blewett Lee and Edmund F. Trabue, its attorneys, and the defendants therein by M. M. Logan and John L. Rich, their attorneys. Defendants in each of said causes produced their answer to the amended bill therein which answer was ordered to be and the same is hereby filed.

Whereupon by agreement of parties by their attorneys aforesaid, the above-entitled causes are now ordered to be and the same are hereby consolidated.

Plaintiff produced and filed stipulations agreed to by the defendants, and the affidavits, and other papers and documents referred to in such stipulations, together with the affidavits of R. W. Bell and D. W. Longstreet, including the affidavits from the various counties

mentioned in said stipulations filed by plaintiff; and thereupon came
the defendants and produced two stipulations agreed to by
197 plaintiff, which stipulations of plaintiff and defendants are
ordered to be, and are hereby filed and are now approved by the court, and the agreements therein are authorized accordingly; and it is ordered by the court that the affidavits, documents, papers, and other evidence referred to in the stipulations shall be considered as evidence in these cases Nos. 731 and 769, in accordance with the agreements between plaintiff and defendants contained in said stipulations.

And it is further ordered that the affidavit of A. B. Jones and the affidavits of ex-assessors from seventy-four counties, produced by defendants, be and the same are hereby filed; and it is further ordered that the reports referred to in said stipulations, viz., Railroad Bulletin No. 21, Commercial Valuation of Railroads; Proceedings of the State Board of Equalization of Kentucky for the year 1904; reports of the Auditor of Kentucky for the years 1904 and 1905; report of the Tax Commission appointed December 21, 1908; sixty-first annual report of the Illinois Central Railroad Company for the year 1911; sixty-second annual report of the Illinois Central Railroad for the year 1912, be and the same are hereby filed.

It is further ordered that the affidavits of H. M. Bosworth, T. S. Ray and C. F. Crecelius filed in action No. 731 on motion for a preliminary injunction shall be considered as evidence in these cases on this hearing, and that the cross-examination of G. W. Lamb on the hearing before the Board of Valuation and Assessment when
considering the assessment of the Louisville & Nashville Rail-
198 road for the year 1913 shall be considered as evidence in
these two causes; and that the affidavit of H. M. Bosworth on hearing for preliminary injunction in case 769 shall be considered as evidence in these cases and that each of the affidavits filed before the Board of Valuation and Assessment in the Louisville & Nashville Railroad case when the Board had same under consideration for the 1913 assessment, showing the ratio of assessed value to real value of Kentucky property for 1912 and 1913, shall be considered and treated as evidence in these cases the same as if said affidavits had been filed in each of these cases.

Then came plaintiff and objected to each and every one of the affidavits produced by defendants on the question of the ratio of assessed value to real value, and to the documents produced and tendered by the defendants, upon the ground that they were irrelevant and incompetent; and came the defendants and objected to each and all of the affidavits and documents produced by plaintiff upon similar grounds.

Pursuant to stipulation between plaintiff and defendants, through their respective counsel, it is ordered that the testimony of John E. Garner to be given in open court in cases Nos. 733 and 775, Chesapeake & Ohio Railway Company v. H. M. Bosworth, et al., and the affidavit of M. B. Blauvelt, to be filed in office May 29th, and in court by order of June 8, 1914, together with exhibits therewith, be considered on the final hearing in submission of this case.

Plaintiff, upon the final hearing, introduced its oral evidence, and upon the whole record these cases are submitted for final decree.

199 Said answer filed by the foregoing order on May 4, 1914 is as follows, to-wit:

In the District Court of the United States for the Eastern District of Kentucky.

No. 731.

ILLINOIS CENTRAL RAILROAD COMPANY, Complainant,
versus
HENRY M. BOSWORTH, THOMAS S. RHEA, AND C. F. CRECELIUS, Defendants.

Answer to Amended Bill of Complaint.

(Filed May 4, 1914.)

For answer to Amended Bill of Complaint filed herein on April 16, 1914, the defendants deny in making an assessment of the franchise of *defendant* for the year 1912, the said defendant- included in said assessment and assessed for taxation in the State of Kentucky stocks, bonds, cash, notes, advances and miscellaneous properties, aggregating $54,300,746.49 or any other sum, none of which was ever in Kentucky or had any situs there, but all of which was located outside of the State of Kentucky on June 30, 1911, and had never been in the said State of Kentucky, nor had any connection whatever with the business of transportation carried on by
200 said complainant, none of which said stocks, bonds or other properties covered or represented the physical railroads or other properties operated by complainant. And defendants deny there was an inclusion of said properties aggregating $54,300,746.49 in making said assessment. The defendants deny there was an assumption by the said defendants acting in the name of the Commonwealth of Kentucky to tax property located and having its situs outside of the State of Kentucky, which constituted taking and depriving complainant of its property without due process of law, in violation of the Fourteenth Amendment to the Constitution of the United States.

Second. The defendants deny that in assessing the franchise of complainant for the year 1912, the complainant was deprived of its property without due process of law in violation of the Fourteenth Amendment to the Constitution of the United States; and the defendants deny that in assessing the franchise of complainant for the year 1912, they included in said assessment of complainant's property in Kentucky, the value or any value of the tangible property of complainant situated in other States, including terminals, land, roadbed and real estate of every character used for railroad

purposes. The defendants deny that the property of complainant is of much greater value, mile for mile, acre for acre, outside of the State of Kentucky, than is the value of complainant's property in the State of Kentucky. The defendants deny they therefore erroneously or otherwise assessed the property of complainant
201 in the State of Kentucky, at a sum not less than $14,391,000.00 over and above the value of complainant's property in Kentucky.

The defendants deny in making the said assessment they made the following mistakes and errors:

1. In ascertaining the market value of the outstanding shares of stock and funded debt of the said corporation, the said defendants, instead of using the average price of the capital stock during the year, used the highest price during the entire year at which any of the shares of the capital stock of the complainants was sold, and, instead of using the actual value of the bonds secured upon the railroads operated by the *claimant*, they used the par value of said bonds, whereas in many instances the bonds were worth less than par, and by the said errors in computing the stocks and bonds *and* overestimate of $10,684,581.00 was made.

In capitalizing what they said defendants considered to be the net earnings of the system of railroads operated by the complainant, by mistake the said defendants capitalized the gross corporate income of the complainant, instead of capitalizing as they should have done the "Operating Income" of the complainant, plus such portion of its "Other Income" as was derived from "Railroad Operations," less "Other Rents," whereby a mistake of approximately $72,569,700.00 too much was made.

Third. The defendants move to strike the following from complainant's amended Bill:

"Complainant says that six per cent is a rate of interest too low to constitute a proper basis upon which to capitalize net earn-
202 ings, and that on account of the risk involved of bad years and of reduced rates, the hazard of business, the increase of the cost of wages and supplies, the burden of increased taxes, full crews, workmen's compensation for injuries, outlays for the construction of depots and grade crossings and other objects which do not increase revenue, no basis less than eight per cent affords any just criterion for computing value on the basis of capitalizing net earnings."

Wherefore, the defendants having fully answered herein pray that complainant's original and amended Bill be dismissed, as they will ever pray.

JAMES GARNETT,
Att'y General.
JNO. L. RICH,
M. M. LOGAN,
Ass't Att'y-Gen.

203 Complainant's stipulation filed by the foregoing order on May 4, 1914, is as follows, to-wit:

United States District Court, Eastern District of Kentucky, at Frankfort.

No. 731.

ILLINOIS CENTRAL RAILROAD COMPANY
versus
HENRY M. BOSWORTH et al.

No. 769.

SAME
versus
SAME.

Stipulation.

(Filed May 4, 1914.)

It is stipulated between plaintiff, Illinois Central R. R. Co., and defendants, Henry M. Bosworth, et al., that on the final hearing of the above-entitled cases the following documents and other papers and the affidavits hereinafter specified may be read in evidence and considered and treated without objection as evidence, the said affidavits being treated as depositions of the affiants duly taken, viz:

204 1. Affidavit of Archibald S. Baldwin, printed pamphlet, "Bill and Affidavits," page 25.
"Daniel J. Brumley," page 26.
"Arthur L. Davis," page 27.
"Daniel J. Brumley," page 39.
"Daniel J. Brumley," page 41.
"Chas. H. Markham," page 31.
"Martin P. Blauvelt," page 35.
"Martin P. Blauvelt," page 29.
"Milton H. Smith," page 43.

2. Census reports, State and Federal, read on motion for preliminary injunction in one or the other of these cases, and, also, such reports mentioned in the affidavit of G. W. Lamb, filed in the case in this court of Louisville & Nashville Railroad Company against the defendants herein.

3. Reports of the Board of Equalization of the State of Kentucky for the years 1910, 1911 and 1912 read on motion for preliminary injunction in one of these cases, and the report of said Board for the year 1913.

3½. Reports of State Auditor for same years.

4. Report of the Special Tax Commission of the State of Kentucky, 1912-14.

5. Affidavit of G. W. Lamb hereinbefore mentioned, except such part of it as is applicable to the details of the assessment of the Louisville & Nashville R. R. Co., hereafter to be specifically indicated,

6. Affidavit of M. K. Barnum of November 18, 1912, read on the hearing of the motion for preliminary injunction.

205 7. Equalization table entitled equalization read on the hearing on the motion for preliminary injunction herein, and,

Analysis of aggregate assessment of all property subject to ad valorem taxation in Kentucky; showing % that each class is of the total of all taxable property.

8. Affidavit of David W. Longstreet dated April 24, 1914.

9. Affidavit of Rob't W. Bell, dated April 23, 1914.

10. List of sworn statements of ratio of assessment to real value of realty in Kentucky for the years 1911 and 1912:

County.	Name.
Ballard	J. N. Trimble.
	V. A. Crice.
	Wm. Henderson.
	B. F. Billington.
	D. C. Tackett.
Caldwell	J. D. Leech.
	W. D. Dawson.
	Henry Towery.
	M. P. Smith.
	R. L. Gresham.
Carlisle	John E. Kane.
	J. O. Glenn.
	Jas. R. Burnley.
Christian	E. C. Radford.
	G. L. Campbell.
	T. J. McReynolds.
	W. T. Tandy.
	W. A. Radford.
206 Daviess	T. A. Pedley.
Fulton	H. F. Taylor.
	R. M. Chowning.
Henderson	H. H. Williams.
	David Banks.
	Robert E. Johnson.
	Gabriel W. Crutcher.
	A. H. Abbott.
La Rue	John W. Read.
Lyon	J. M. Smith.
	W. N. Cummins.
	T. P. Gray.
	U. S. King.
	Sam G. Cash.
Marshall	J. H. Little.
Muhlenberg	D. M. Roll.
	W. D. Blackwell.
	H. C. Lewis.
	G. M. York.
	C. E. Blackwell.
Trigg	Edw. R. Sekelt.

11. Affidavits filed by Louisville & Nashville R. R. Co., Chesapeake & Ohio R'y Co. and Cincinnati, New Orleans and Texas Pacific R'y Co., showing ratio of assessment to real value of Kentucky property for the years 1911 and 1912.

207 12. Exhibit G with bill in case No. 769 and the affidavits attached thereto filed by plaintiff with the Board of Valuation and Assessment.

BLEWETT LEE,
TRABUE, DOOLAN & COX
For Plaintiff.

M. M. LOGAN,
Ass't Att'y General for Defendants.

208 Said affidavit of Milton H. Smith referred to in foregoing stipulation was filed on May 4, 1914, and is as follows:

In the District Court of the United States for the Eastern District of Kentucky.

In Equity. No. 729.

LOUISVILLE & NASHVILLE RAILROAD COMPANY, Complainant,
versus
H. M. BOSWORTH et al., Defendants.

Affidavit of Milton H. Smith.

The affiant, Milton H. Smith, states he is seventy-six years of age, a resident of Louisville, Kentucky, and is now and has been for more than thirty years the chief executive officer with the title of President or Vice President of the complainant, Louisville & Nashville Railroad Company. He states he has reason to believe and does believe that the assessment of complainant's franchise herein complained of is not only a false assessment, grossly in excess of the actual value of the franchise alleged to have been assessed, and arbitrarily and capriciously made without any reason for the conclusion reached, except a desire to force complainant to pay an undue proportion of the State's revenues, but the members of the Board of Valuation and Assessment were illegally influenced and
209 coerced into making said assessment by one Justice Goebel, referred to in complainant's bill as "Adviser to the Board of Valuation and Assessment."

The said Goebel, who volunteered his services as such "Adviser," claims to be a resident of Covington, Kentucky, but his place of business, if any he has, is in Cincinnati, Ohio, and his family, as affiant is informed and believes, resides in Arizona. The said Goebel is not an officer nor an employe of the State of Kentucky; is not a lawyer nor an accountant, nor one who has had any experience in valuing railroads or other similar properties; nor has he had any experience to qualify him in any sense as a tax expert. He is a man,

however, full of vindictive animosity, and is now and has been for many years fanatically hostile to the public service corporations, especially the steam railroad companies operating their lines in the State of Kentucky, and particularly the complainant, Louisville & Nashville Railroad Company, and in order to injure and cripple said corporations he planned and schemed to obtain an undue influence and control over the members of said Board in the matter of valuing and assessing the franchises of such corporations for the year 1912.

In January, 1900, the said Goebel's brother, William Goebel, who had been the Democratic candidate for Governor of Kentucky, at the election held in November, 1899, and who was making a contest over the result of said election, his opponent having been declared elected, was assassinated. The whole State of Kentucky was thereby thrown into wild excitement, and for several years
210 thereafter was in political turmoil, and references to the spilt blood of William Goebel have down to the present time been found by those desiring to use the same to be an easy and sure way of stirring up the passions of the people. In his campaign for Governor, the said William Goebel had violently assailed the corporations of this State, and the complainant, Louisville & Nashville Railroad Company, in particular.

As above stated, the said Justus Goebel is and has been since the assassination of his brother, William Goebel, extremely bitter toward corporations, and more especially railroad corporations, in this State; and by the time the members of the present Board of Valuation and Assessment came to take up the matter of valuing and assessing the franchises of public service corporations doing business in this State, and for some time prior thereto, he got busy and, having acquired by some means the influence and control over the said members he had sought and labored for, he exercised the same by inducing said board on or about April 12, 1912, to adopt his figures and promulgate the tentative assessments he had presented, and subsequently to approve and announce the final assessments he had dictated of the franchises of said corporations, including that of the complainant, in order to gratify his personal hatred and malice, and to exploit himself in the newspapers, as he has repeatedly done, under the pretense that he is an unselfish patriot, claiming to have employed much time and labor in the interest of the people at large without compensation or hope of political or official reward, treating
211 the members of said Board as figure-heads, and arrogating to himself supposed great credit, honor, and glory for what he had accomplished through said Board as his instrumentality.

Affiant states after said Goebel got into communication with the members of said Board, he stayed with them continuously for about six months, though he was not and is not an official nor an employe of the State, nor a man of any special knowledge or experience in such tax matters or in the valuation or assessment of the properties of railroads or properties in public use; and affiant believes and has reason to believe that said Goebel dominated said Board and demanded that the assessment of the franchises of the

steam and street railroads, and other public service corporations, assessable by said Board, should be fixed at amounts named by him, and which are the amounts at which they were in fact finally fixed by said Board, and said assessments are not, in any just or proper sense, the assessments of said Board, but are the assessments of Justus Goebel. The said assessments aforesaid are not the result of the free, independent, or unbiased judgment of the members of said Board, but the same were dictated and procured by said Goebel and are the outcome and product of his dominating influence and control over said Board, the members of which were actuated by their desire to raise the State's revenues sufficiently to pay off its outstanding indebtedness during the four years' term of the present State administration without resorting to the Legislature to raise
212 the existing tax rate of fifty cents on each $100 of property generally returned for State taxation.

The affiant states that under date of September 7, 1912, after the said final assessments were promulgated, one Thomas B. Cromwell, upon information received by him from said Goebel, sent a special dispatch from Lexington, Kentucky, to the Cincinnati Enquirer, which was published in that newspaper September 8, 1912, containing, among other things, the following statements concerning the part played by said Goebel in procuring said assessments:

"It was Justus Goebel, with General Percy Haly, who proposed the name of James B. McCreary for Governor, and it was he who formed the alliance that promoted his nomination and election. It was Justus Goebel who furnished what was ultimately necessary to encompass the defeat of Ruby Laffoon by Henry Bosworth for the nomination which resulted in the election of Bosworth as State Auditor and made him Chairman of the Board of Assessment and Valuation, the other two members of which are State Treasurer Thomas Rhea and Secretary of State C. F. Crecelius.

"When Justus Goebel was doing these things it was with a view to securing this increased revenue from the franchise tax. Before he gave his support to Auditor Bosworth he sent for him in May, 1910, and asked him what his ideas about this matter were. Bosworth replied that he would do 'only the fair thing by the people and the corporations,' whereupon Justus Goebel unfolded to him his ambition to have the ideas of William Goebel about these assessments carried out. Bosworth expressed a willingness to do what Justus Goebel would advise, and, accepting his advice, made the increased valuation of franchises his platform, thus becom-
213 ing the pioneer among the members of this State administration in the movement for the advancement of the people's interests in this direction.

"The effort that was made last winter to create by legislative enactment a Public Utilities Commission had the indorsement of Treasurer Rhea and other members of the State's official family, but it was not a part of the Goebel-Bosworth plan and they put up a hard fight, that resulted in its defeat. The fight over the public utilities bill delayed the work of the State Board of Valuation and Assessment, but as soon as the Legislature was adjourned Justus Goebel

suggested to Chairman Bosworth the employment of John L. Rich, the Covington attorney, who has had wide experience in matters involving taxation, and together they went to work to probe the past and to bring about tentative assessments that more nearly represented justice and equity than did the figures upon which the railroads had paid a pittance, and the lobbyists had waxed fat. At the end of a month they placed before the board the result of their investigations, and the board, after carefully studying the figures and the evidence, voted the adoption of large increases."

Again, as showing his animus in procuring these assessments to be made by said Board, the said Goebel, in an open letter dated October 31, 1912, addressed to the Governor and others, published in the Courier Journal and other newspapers, after quoting the words alleged to have been uttered by his brother, William Goebel, who was shot by an assassin in January 1900, stated:

"These last words of my assassinated brother, William Goebel, have a sacred significance to me and when in September, 1909, I again commenced to take an active interest in our State's affairs, it was not to gain political favor, for there is no office I
214 would have; but it was with hope and confidence that my work would, during the administration of the present State officers, open up an opportunity for Kentucky to take up William Goebel's work where the assassin's bullet had interrupted it, and in that event every department of our government would give thereto by voice and action most positive, vigorous and loyal support."

As further illustrating his leading and controlling part in bringing about these franchise assessments and the motives which actuated him, said Goebel stated, in the same open letter:

"My interest in the work just completed by the board was, and is, different from, and greater than, that of any man in Kentucky or elsewhere—even though he may have been connected with the work. Love of my State and love for and memory of my assassinated brother, whose brain-work constructed and whose blood stained the statutes which made it possible to do what the Board of Valuation and Assessment has just completed, have compelled of me the service I have rendered in the matter, and, without official duty resting on me, I have given untiringly and almost constantly more than five months of time, energy and study to these assessments in the interest of the State and its people, to the exclusion of every other interest—business and personal."

Furthermore, in a prepared speech read by him before an assembly of county officers which he was instrumental in calling together from different parts of the State, in Frankfort, Kentucky, on November 8, 1912, as published in the Evening Post of Louisville, the said Goebel made this admission:

215 "I have labored for months and years to bring about the assessment made in 1912."

And in the same speech, by way of showing what a severe blow he thought he had dealt the public service corporations in this State through said Board, the said Goebel appealed to the cupidity of his hearers as follows:

"What does the hundred dollar increase made by the present Board of Valuation and Assessment on corporation franchises mean to the people of different sections of the State and to the whole State?

"The one hundred million dollar increase means half as much as the amount of the total value of all the property equalized for taxation in the county of Jefferson, which includes the city of Louisville.

"Comparing the increase with the counties that contain the three largest second-class cities of the State, the increase equals the amount of the total value of all property equalized for taxation in the counties of Campbell, Fayette, Kenton, and Franklin, combined, which include the cities of Newport, Lexington, Covington and Frankfort.

"Comparing the increase of one hundred million dollars with the western section of the State, it equals the amount of the total value of all property equalized for taxation in the entire first congressional district, embracing thirteen counties, and in addition thereto, of all the counties of the Second district, with the exception of Henderson and Daviess.

"Comparing the increase of one hundred million dollars with the central portion of the State, it equals the amount of the total value of all property equalized for taxation in the Eighth congressional district, embracing ten counties, and in addition thereto the
216 county of Fayette, which includes the city of Lexington.

"Comparing the one hundred million dollar increase with the eastern section of the State, it equals the amount of the total value of all property equalized for taxation in all the counties embraced in the old Ninth and Tenth congressional districts with the exception of the county of Fleming, or, in all twenty-six counties."

Still further illustrating said Goebel's rabid animosity and maliciousness against these corporate interests while appearing in the role of "Adviser" before said Board, as well as the fact that these increased assessments were the result of his own individaul scheme and handiwork co-operating with the desire of the members of said Board to increase the revenues of the State for the purpose aforesaid, he, in the same tirade delivered on November 8, used this language:

"When first I determined to give myself to this work of compelling adequate taxation of corporations, I knew they would invoke every power of the world, the flesh and the devil that could possibly, by fair means or foul, be commanded to aid them to prevent the carrying out of my designs which were already a part of the just law of the land, and I have not been disappointed."

Affiant states that the members of the said Board have made no denial of these statements of said Goebel giving an account of the part he took in these assessments and in causing said Board to make the same, but the members of said Board, by their silence and failure in any manner to contradict the same, have acquiesced in the correctness and truth thereof as given out by said Goebel, himself.

217 Affiant states that said Goebel concluded his said harangue on the occasion mentioned with the following vicious, false,

and slanderous accusations against the public service corporations of this State:

"We are fighting a monster, we are fighting a demon that will resort to anything—and they tried everything but murder to prevent the board from making these assessments.

"They have attempted to corrupt the Board of Assessment and Valuation, and they will go further to attain their end. If they can, they will corrupt the courts, as they have done ere this. And that is what I want to convince you of and warn you against. Protect yourselves and others in these cases and have lawyers who will make the facts so clear that there can be but one course open to the courts, and then they will follow it."

Affiant states he is informed and believes that said Goebel prepared and caused to be printed and stereotyped or put in plate form, in Cincinnati, Ohio, for publication simultaneously, on or about October 22, 1912, in more than one hundred newspapers in Kentucky, an incendiary and sensational communication, in which he abused and villified the corporations assessed as aforesaid and severely criticised the Governor and other State officials for their alleged lack of zeal and sympathy with him in having these extraordinary assessments brought about, and their alleged failure or refusal to employ additional attorneys to aid the Attorney General in defending the injunction suits instituted in this Court by the corporate victims of said assessments.

But affiant is informed and believes that after placing said plate matter in the hands of the express company or companies for
218 transportation to the various newspapers throughout this State for publication as aforesaid, the said Goebel was by some means or in some manner induced by some person or persons to recall and withhold said communication from publication as he had contemplated; and thereafter a communication of like character, dated October 31, 1912, hereinabove referred to, was addressed by said Goebel to the Governor and others, in a greatly modified form, and caused by him to be published in the Courier-Journal, at Louisville, and other newspapers on or about November 1, 1912.

Affiant states he believes and has reason to believe that by these methods, and by other incendiary statements of this kind, as well as threats on the part of said Goebel to hold up the members of said Board before the people of the State as untrue to their official duties if they refused to fix such franchise assessments as he desired and put before them, the said Goebel coerced the said Board into making said assessments, and has in the way above pointed out endeavored to coerce the Governor and Attorney General of the State, as well as the officials of the several counties interested in said assessments, into doing his bidding and what he demands in the matter of the employment of special or additional counsel of his selection or to be named by him at high fees upon contracts dictated or prepared by him, to assist the Attorney General in the injunction suits brought by the complainant and other corporations in this court.

219 Affiant states that the Governor of the State in a published statement, referring to the said modified communication of said Goebel, has said:

"He (Justus Goebel) was present at the meeting of the Board of Valuation and Assessment, which occupied about five months."

In what avowed capacity Justus Goebel was present at these meetings of said Board during that period affiant has been unable to learn, but that he was present and exercised a sinister influence upon the said Board he believes to be an undoubted and undeniable fact; and, in the making of the assessment of the franchise of the complainant, Louisville & Nashville Railroad Company complained of in this action, that Company has been treated, at the instance of said Goebel, not as a citizen and taxpayer of the State of Kentucky, but in the language above quoted of said Goebel as a "monster—a demon."

Affiant states that it was under the lash and spur of this external power exerted on the part of "Adviser Goebel" and exercised by him almost incessantly for many months, and through his threats and intimidation, that said Board, moved by considerations other than an impartial and independent discharge of its own duty, made the final assessments of the franchises of said corporations, including that of the complainant, which were fixed and promulgated on August 31, 1912, and the same are on that account to all intents and purposes fraudulent and void.

220 By way of showing the injustice and inequality of the final assessments by said Board of the franchises of the complainant and other public service corporations that have brought their injunction suits in this Court, as compared with the assessments made by said Board of the franchises of other corporations and bank shares of stock, and with assessments of other property in this State as equalized by the Board of Equalization, and the effect upon the complainant corporations in their said suits, should taxes based on the franchise assessments complained of be exacted of them, affiant files herewith as part hereof his communication, marked Exhibit A, published in the Courier-Journal in its issue of this date, the statements of which are true.

M. H. SMITH.

State of Kentucky, County of Jefferson, ss:

Subscribed and sworn to before me by said Milton H. Smith, this the 19th day of November, 1912.

My commission expires on the 24th day of January, 1914.

G. W. B. OLMSTEAD,
Notary Public, Jefferson County, Ky.

221 Census reports State and Federal and other papers referred to in Item 2 of Stipulation of May 4, 1914, are not copied as same are included in Bill of Evidence prepared by respective counsel and approved by the court See page —.

Reports referred to in Item 3 of Stipulation of May 4, 1914, not copied for same reason.

Reports referred to Item 3½ of Stipulation of May 14, 1914, not copied for same reason.

Reports referred to in Item 4 of Stipulation of May 4, 1914, not copied for same reason.

Part of affidavit of George W. Lamb referred to in Item 5 of Stipulation of May 4, 1914, is as follows, to-wit:

In the District Court of the United States for the Eastern District of Kentucky.

In Equity. No. 371.

LOUISVILLE & NASHVILLE RAILROAD COMPANY, Plaintiff,
versus
H. M. BOSWORTH, et al., Defendants.

Affidavit of Geo. W. Lamb.

The affiant, Geo. W. Lamb, says that he is forty years of age and is a resident of Louisville, Ky., and is Second Assistant Comptroller of the Louisville & Nashville Railroad Company, and that his duties as such Second Assistant Comproller are to assist the Comptroller of said company in the supervision and direction of all of the accounts, records and statistics of said company; that he has been connected with the Accounting Department of the Lousiville & Nashville Railroad Company for nearly fourteen years, and is familiar with all of the accounts, records and statistics of said company.

222 Affiant says particularly that during the last four or five years his time has been devoted very largely to the preparation of statistics and investigations as to the values of properties of the Louisville & Nashville Railroad Company in the several States through which the lines of that company pass; that he has prepared, and supervised the preparation of, reports of the Louisville & Nashville Railroad Company to the Railroad Commission of the State of Kentucky, to the railroad commission of other States to which the Louisville & Nashville Railroad Company renders such reports, and to the Interstate Commerce Commission, and he is familiar with the facts and figures set forth in said reports, and with the sources from which said reports are compiled.

Affiant says that he has particularly considered and studied the returns on investments and the risk in the railroad business as compared with the return on investment and the risk in other classes of business in the territory through which the Louisville & Nashville Railroad Company operates its lines; and affiant says that in view of the risks of the railroad business, the percentage used in capitalizing income for the purpose of arriving at the value of the capital stock of a railroad company for taxation purposes should not be less than 8%.

Comparisons of Real Values and Assessed Values in the State of Kentucky.

Affiant says that the report of the United States Census for 1890, pages 14 and 59, shows that the percentage of assessed valuation to

223 true valuation of real and personal property taxed in the State of Kentucky declined from 96.60% in 1850 to 46.71% in 1890, and affiant showed this fact to the Board of Valuation and Assessment in the hearings before it as set forth in his Exhibit Geo. W. Lamb No. 25, which is filed as part of "Exhibit A" with the Bill in this case.

Affiant further states that according to Tables 15 and 16 of the Special Report on Wealth, Debt and Taxation, issued by the Census Bureau in 1907, the percentage of assessed value to estimated true value of property subject to ad valorem taxation in the State of Kentucky had declined to 45.09% by 1904, and this fact was shown to the Board of Valuation and Assessment in the hearings before it and was set forth in a statement filed by affiant with said Board marked "Exhibit Geo. W. Lamb No. 26," and a copy of this exhibit as filed by him appears as part of "Exhibit A" filed with the Bill in this case.

And for ready reference, affiant gives as follows the ratio of assessed value to estimated true value of real and personal property taxed in the State of Kentucky, including railroads, street railways, telegraph and telephone systems, privately owned waterworks and privately owned central electric light and power stations, at 10-year periods from 1850 to 1900, inclusive, and for 1904, as shown by pages 40 and 41 of the Special Report on Wealth, Debt and Taxation of the Census Bureau for 1900, and by pages 14 and 59 of the Special Report on Wealth, Debt and Taxation of the Census Bureau for 1890:

224

1850	96.60%
1860	79.30%
1870	67.77%
1880	41.10%
1890	46.71%
1900	47.7 %
1904	45.9 %

And affiant showed these facts to said Board in said hearings before it in a statement which he filed with said Board marked "Exhibit Geo. W. Lamb No. 27," a true and correct copy of which exhibit is filed as part of "Exhibit A" with the Bill of Complaint in this case.

Affiant says that the comparisons given for the year 1904 were the latest comparisons available from the reports of investigations made by the United States Census Bureau, but that he himself made later comparisons between real values and assessed valuations in connection with the consideration of the work of the State Board of Equalization for 1913. In making such comparisons affiant compared the assessed values as equalized by said State Board of Equalization for 1913 with the real values as reported in a bulletin of the 13th Census of the United States for 1910; and affiant says that it is commonly known that the real values of property in Kentucky for 1913 were greater than the real values of property in Kentucky for

1910, and that, therefore, the percentages of assessed values to real values shown as a result of his comparisons of the assessments and equalizations for 1913 with the real values for 1910 were higher
percentage than would be shown by a comparison of the as-
225 sessed values for 1913 with the real values for the same year.

Affiant says that his investigation showed with respect to tracts of lands with improvements, line 15 of the Report of the Board of Equalization, an equalized value of $355,285,669, as compared with the real value of farm lands and buildings shown by the census of the United States for 1910 of $635,459,372, and that with respect to this item the percentage of equalized value for 1913 to the real value as shown by the 13th Census Report for 1910 was 55.9%.

Affiant says that the equalized value of thoroughbred or standard stallions, geldings, mares and colts, stallions of common stock, geldings, mares and colts of common stock, mules and mule colts, jacks, jennets, thoroughbred or standard bulls, cows and calves, bulls, cows and calves and steers of common stock, and sheep and hogs, as fixed by the Board of Equalization for 1913, as shown by lines 20, 22, 24, 26, 28, 30, 32, 34, 36, 38, 40, 42 and 44 of its report was $57,318,478, as compared with the real value for such live stock for 1910, as shown by the bulletin of the 13th Census of the United States of $117,486,662, and that the percentage of equalized value for 1913 to the real value for 1910 was 48.8%.

Affiant further says that the equalized value for 1913, as shown by lines 45 and 49 of the Report of the State Board of Equalization of Agricultural Implements, Wagons, Carriages, Bicycles and Vehicles of every kind, was $8,921,889, as compared with a real value
for 1910, as shown by the United States Census of farm imple-
226 ments and machinery alone of $20,851,846. The equalized value for 1913, with respect to these items, was only 42.8% of the real value for 1910, and the real value does not include automobiles and other vehicles not used on farms.

Affiant says further that the bulletin for the 13th Census of the United States, which he has heretofore referred to, was a bulletin relating mainly to agricultural statistics for the State of Kentucky, and that while that bulletin shows separately the value of farm lands and the value of buildings on farm lands, it does not show separately the value of city or town lots with improvements or other real estate, but affiant is able to make a rough comparison of the equalized and real values of all taxed real property and improvements as follows:

From the Report of Wealth, Debt and Taxation, issued by the Census Bureau in 1907, and specifically from Table III, page 16 of said report, it appears that the total value of farm lands and improvements taxed was 52.872% of the total value of all taxed real property and improvements, and estimating that the increase in value for city and town lots with improvements was relatively the same as the increase in value of tracts of lands with improvements, it is apparent that the value of all taxed real property and improvements, as of 1910, may be roughly approximated by assuming that the value of tracts of lands and improvements, $635,459,672, shown by the bulletin of the 13th Census of the United States referred to,

is 52.872% of the value of all taxed real property and improvements, and upon this assumption the true value of all taxed real
227 property and improvements in Kentucky in
1910 was $1,201,882,607,
and from lines 18 and 15 of the Report of the Board of Equalization for 1913, it appears that the equalized value of all taxed real property and improvements was as follows:

18. Value of city or town lots with improvements..	$292,318,046.
15. Value of tracts of lands with improvements...	355,285,669,
Equalized value of all taxed real property and improvements	647,603,715,
from which it would appear that the equalized value of all taxed real property and improvements for 1913 was	53.882%

of the real value of said taxed real property and improvements in 1910 and was, therefore a much smaller percentage of the real value of said property in the same year in which the equalization was made.

Affiant says that of the total assessed value of personal property subject to taxation for 1913, as shown by the Report of the Board of Equalization.....	$202,170,189,
there was not subject to equalization, as shown by the Report of the Board of Equalization....	83,931,799,
228 leaving, subject to equalization	118,238,390.
which last amount was equalized at	120,635,691,
to which add amount not subject to equalization...	83,931,799,
and there is had, as the equalized value of personal property assessed or equalized by the State Board of Equalization	204,567,490.
Of this last amount affiant has been able to compare the equalized values of live stock, agricultural implements and vehicles, amounting to over.....	66,000,000,
with the real values, as he has heretofore explained, leaving about	138,000,000.

of the equalized value of personal property assessed or equalized by the State Board of Equalization for which no comparisons have been made.

And affiant further says that it is a matter of common knowledge in the State of Kentucky that personal property other than live stock and vehicles was and is either omitted from taxation or was and is assessed at a very small proportion of its real value.

And affiant says that of the general property tax collected in the State of Kentucky about 80% is equalized by the State Board of Equalization and that as result of investigations which he has made in this regard it clearly appears that property equalized by the State Board of Equalization is assessed and taxed and equalized at not more than 52% of its real value.

229 Affiant further says that he has investigated the assessments made for 1913 by the State Board of Valuation and

Assessment of the franchises of corporations subject to its jurisdiction, and has compared the results of the calculations made by or on behalf of said Board and which appear or appeared in the envelopes on file in said Board's office with the final assessments made by said Board of certain corporations. Affiant says that the working papers and calculations considered by him were certified to be true and correct copies of the working papers and calculations which appeared in the jackets, or envelopes, in the Auditor's office, with respect to the assessments of the franchises of the several corporations considered for the year 1913, and that certification of said working papers and calculations was made by Chas. J. Veling, Chief Clerk of the Corporation Department in the office of the Auditor of Public Accounts and Secretary of the Board of Valuation and Assessment.

Affiant says that the following is substantially a true and correct copy of the working papers which appeared in the envelope relating to the assessment of the franchise of the Cumberland Pipe Line Company for taxation for the year 1913, and of notations on the jacket relating to said company:

230

Cumberland Pipe Line Co.
As on Yellow Slip.

6) 107,139

1780000
80

1,424,000.0

$1,400,000 is an 80% Assessment.

Jacket.

As finally assessed and paid on July 16, 1913.

Total Capital	$800,000
Less tangible property	361,924
Franchise	$438,076
Tax	2,190.38

Affiant further says that the item "107,139" refers to the net income of said Cumberland Pipe Line Company, Incorporated, as reported in the report made by said company to the Auditor to Public Accounts of Kentucky, as of June 30, 1912, and that the calculations appearing on said working paper represent the process of capitalizing said net income at 6% and equalizing the result at 80% as is shown by notation on said working papers that "$1,400,000 is an 80% Assessment."

Affiant says further that the final assessment made of the franchise of said Cumberland Pipe Line Company was based upon a valuation of the total capital stock of $800,000, which is 44.94% of the valuation of $1,780,000, arrived at by capitalizing the net in-

come of said company, as reported to the Auditor of Public Accounts of Kentucky at 6%.

231 Affiant further says that the following is a copy of the working paper which appears in the jacket concerning the assessment of the franchise of the Louisville Gas Company for 1913 by the Board of Valuation and Assessment, and of the notations on said jacket with reference to the final assessment:

Louisville Gas Company.

Stock	3,600,000		
	120		
Asest.	720		Under the terms of the merger the city received 150 per share for its stock. The other holders the equivalent of $120.00.
should be	360		
$3,400,000.	4,320,000	Market Value	
	200,000		
	4,520,000		
	21,752		
	216,000		
	6) 237,752		
$4,500,000.	3,962,500		
	4,520,000		
	2) 8,482,500		
	4,241,250	Average value.	
	80		
	3,393,000.00		

	21,752	Int.
	216,000	Div.
	237,752	
	74,920	Credit
6)	152,832	Net
	2,547,000	
	4,520,000	St'k & Bond
2)	7,067,000	
	3,533,000	Average
	80	
	2,826,400	

4,520,000 Total Capital
232 on basis of shares at 120 and bonds 3,533
70

at par 4520 2,473,100
70 2,250

3,164,000 220....
3,160,000 = 70%

(Jacket.)

As finally assessed and paid on July 19, 1913.

Total Capital	$2,250,000
Less tangible property, &c.	732,175
Franchise	$1,517,825
Tax	7,589.13

Affiant says that said calculations show that the Board of Valuation and Assessment found the value of the total capital stock of the Louisville Gas Company, on the stock and bond plan, to be $4,520,000.00,
and the value of the total capital stock arrived at by capitalizing at 6% the amount paid for interest and dividends alone to be..... 3,962,500.00,
and that the Board found the value of the capital stock of the Louisville Gas Company by averaging the two values above stated to be..... 4,241,250.00

Affiant further says that the final assessment of the franchise of the Louisville Gas Company, made by the Board was based on an assessment of the total capital stock of said company at..... $2,250,000.00,
which amount is 49.78% of the valuation of.... 4,520,000.00,
arrived at on the stock and bond plan.

Affiant further says that the following are copies of memoranda and calculations appearing on working papers in the jacket,
233 or envelope, in the office of the Auditor of Public Accounts with respect to the franchise of the Pullman Company for taxation for the year 1913, and of notations on said jacket with reference to the final assessment made by the Board of Valuation and Assessment of the franchise of said company for said year:

Pullman Co.

Operating Car Rev.

12,719,552) 10,831,718.00 (85
10,175,641.6

656,076.40

85% of revenues of company are derived from operation of cars. Therefore that proportion of its entire capital must be employed as a common carrier—

Net Car Operating Revenues:

Less taxes 10831718.
931134

6) 9900584

165,000,000
.009

1,485,000 in Ky.

Mileage within and without Ky.

216969) 193 6000 (.009
195 0721

Stock and Bond Plan.

In report to Auditor Company state its stock is worth $105 per share. This — a very low valuation on 8% stock.

On this basis 120,000 shares *is* worth
105

600
120

126,000,000 Total Cap.

Deduct 18,000,000 Used in manufacture.

108,000,000
.009

972,000 in Ky.

234 Total Capital employed in business of company as shown by statement to Interstate Com. Commission
148,000,000

Employed in Manf. Deduct 22,200,000

125,800,000
.009

1,132,200 in Ky.
972,000 in Ky. Stock & Bond.
1,485,000 in Ky. Cap.—Net Income.

3) 3,589,000

1,163,000 Average in Ky.
80

932,400 in Ky.

(Jacket)

As finally assessed and paid on July 3, 1913.

Total Capital	$600,000
Less tangible property, etc	241,265
Franchise	$358,735
Tax	1,793.68

The final assessment of the franchise of the Pullman Company made by the State Board of Valuation and Assessment for 1913 was based upon a valuation of the total capital stock of that company in Kentucky of $600,000.00

Affiant says that the calculations on the working papers in the jacket pertaining to the Pullman Company show that the Board found the total capital stock of the Pullman Company in Kentucky to be, on basis of capitalizing revenues at 6½ 1,485,000.00,

of which the assessed value of the total capital stock, $600,000.00, is about 40%

235 and the Board found the total value of the capital stock of the Pullman Company in Kentucky, on the stock and bond plan, with stock figured at $105 per share, to be 972,000.00,

of which the assessed value, $600,000.00, is about.. 61%,

but affiant says, as shown by notation on working paper made by the Board, $105 per share is a very low valuation on an 8% stock, and the market value of the capital stock of the Pullman Company on June 29, 1912, was $161 per share, on which basis the proportion of the value of the total capital stock assignable to Kentucky, after deducting $18,000,000.00 for capital used in manufacturing, is..... 1,576,800.00,

of which the value assessed by the Board, $600,000.00, is ..... 38.05%.

Affiant further says that the other calculations appearing on working papers in the Pullman Company jacket show that the Board averaged the number of valuations for the Pullman Company and arrived at an average valuation of the total capital stock of said company in the State of Kentucky of 1,163,000.00,

of which amount the final assessment of $600,000.00 made by the Board, is about ..... 51%.

236 Affiant further says the following is a copy of working sheet appearing in the jacket in the office of the Auditor of Public Accounts of the State of Kentucky relating to the assessment of the franchises of the Kentucky Traction and Terminal Company for taxation for the year 1913, and of notations on said jacket with reference to the final assessment of the franchise of said company:

Kentucky Tract. and Term. Co.

(As shown on Yellow Sheet)

6) 129,883

2,164,700

8

1,731,760

The amended report of this company shows payment of interest in the above sum, but also shows a large deficit. There is no information in report as to the value of its stocks and bonds. It is probable the company is highly over-capitalized. Because of its over-capitalization and the uncertain value of its stocks and bonds—would suggest a tentative assessment of $1,311,080, an increase of 600,000.00 over last year.

(Jacket)

As finally assesssed and paid on August 8, 1913.	Total Capital	$1,200,000
	Less tangible property, etc.	711,080
	Franchise	$488,920
	Tax	2,444.60

Affiant says that according to the report of the Kentucky Traction & Terminal Company to the Auditor of Public Ac-
237 counts, as of June 30, 1912, the operations of that company do not show a large deficit, but, on the contrary, in order to show a deficit, said company charged up, and the Board allowed, as expenses $200,432.32 for enlargement of plant, and affiant says that such expenditures are not properly treated as operating or other expenses, but should be treated as additions to the capital account, and that such expenditures are so treated by the Louisville & Nashville Railroad Company in the reports made by it to said Board.

Affiant further says that the calculations made on said working paper relating to the Kentucky Traction & Terminal Company show that the Board capitalized amount of interest paid by the Kentucky Traction & Terminal Company at 6%, and on this basis found that the total value of its capital stock in the State of Kentucky was $2,164,700.00,
of which amount the final assessment made by the Board of the total value of the capital stock of said company 1,200,000.00,
was, and is 55.43%;
and affiant says further that if the amount improperly charged to expenses as enlargement of plant.... 200,432.32,
had not been so improperly charged, the deficit of.. 91,183.26,
improperly shown in the report of said Kentucky Traction & Terminal Company to the Auditor of

238 Public Accounts of Kentucky, for the year ended June 30, 1912, would have shown instead a profit of 109,249.06,
and the capitalization of income as measured by interest paid, and by profit after paying interest at 6%, would be represented by the capitalization of .. 239,132.98
at 6, which represents a total value of the capital stock of said company in Kentucky of over 3,985,000.00,
of which the assessment made by the State Board of Valuation and Assessment, $1,200,000.00, is about 30%.

The property in Kentucky is generally, habitually and intentionally, by the assessing authorities of said State, assessed and taxed at less than 60% of its real value.

(Signed) GEO. W. LAMB.

STATE OF KENTUCKY,
County of Jefferson, ss:

Subscribed and sworn to by Geo. W. Lamb before me, a Notary Public in and for the State and county aforesaid, this 28 day of January, 1914.

My commission expires on the 30 day of January, 1916.
Witness my hand and notarial seal this 28 day of January, 1914.

[SEAL.] J. F. DAVIS,
Notary Public, Jefferson County, Ky.

239 Said affidavit of Archibald S. Baldwin referred — in foregoing stipulation was filed on November 20, 1912, and is as follows, to-wit:
See page 90.

Said affidavit of D. J. Brumley referred to in foregoing stipulation was filed on November 20, 1912, and is as follows, to-wit:
See page 90.

Said affidavit of Arthur L. Davis referred to in foregoing stipulation was filed November 20, 1912 and is as follows, to-wit:
See page 90.

Said affidavits of Daniel J. Brumley referred in foregoing stipulation were filed December 6, 1912 and are as follows, to-wit:
See pages 104 and 104.

Said affidavit of Chas. H. Markham referred to in foregoing stipulation was filed on September 20, 1912 and is as follows, to-wit:
See page 46.

Said affidavit of Martin P. Blauvelt referred to in foregoing stipulation was filed on December 6, 1912 and is as follows, to-wit:
See page 104.

Said affidavit of Martin P. Blauvelt referred to in foregoing stipulation was filed on November 20, 1912 and is as follows, to-wit:
See page 104.

240 Affidavit of M. K. Barnum of date November 18, 1912 and filed on November 20, 1912, and referred to in Item 6 of Stipulation filed May 4, 1914 is as follows, to-wit:
Heretofore copied see page 90.

Equalization table referred to in Item 7 of Stipulation filed May 4, 1914 are not copied as same are included in Bill of Evidence prepared by respective counsel and approved by the court, and as Ex. see page —.

Affidavit of David W. Longstreet dated April 24, 1914 is as follows, being referred to in Item 8 of Stipulation filed May 4, 1914, to-wit:

United States District Court for the Eastern District of Kentucky.

No. 731.

ILLINOIS CENTRAL RAILROAD COMPANY, Complainant.,
versus
H. H. BOSWORTH, THOMAS RHEA and C. F. CRECELIUS, Constituting the Board of Valuation and Assessment for the Commonwealth of Kentucky, Defendants.

(Filed May 4, 1914.)

STATE OF ILLINOIS,
County of Cook, ss:

Affiant, David W. Longstreet, says that he is the Freight Traffic Manager for the Illinois Central Railroad Company and has filled this position for the last three years; that he has been engaged in the Traffic Department of the Illinois Central Railroad Company for nearly twenty-seven years, and that during his employment he has filled the following positions:

Clerk in Local Freight Agent offices at various points.
Clerk in General Freight Office at New Orleans, and in various capacities up to Chief Rate Clerk.
241 Chief Clerk in General Freight Department, Louisville.
General Freight Agent, Louisville.
General Freight Agent of Southern Lines, at Memphis.
Freight Traffic Manager since May 1, 1911, at Chicago.

That this traffic experience seven years were spent in the State of Kentucky; that he is familiar with the traffic of the Illinois Central Railroad Company in that State and elsewhere upon its lines.

Affiant further says that in the operation of a railroad extending through many States, the earnings from traffic in any particular

State is increased by the lines of railroad and terminals existing in other States, and that this is particularly true of terminals, which are the most expensive property of a railroad company, and that the convenience which such terminals afford the public contributes greatly to the amount of the earnings from the traffic.

Affiant further says that the State of Kentucky is located midway in the Illinois Central System and that much of the traffic of the Illinois Central Railroad is originated by lines and terminals in other States and passes through the State of Kentucky, thereby increasing the amount of earnings of the Kentucky lines; that all of the business moving over the lines of the Illinois Central Railroad between points north of the Ohio River and points south of the State of Kentucky passes through the State of Kentucky, most of it on the main line between Cairo, Illinois and Fulton,
242 Ky., and that notable instances of such traffic are the following, which passes over the said main line:

Cotton, 302,721 bales.
Lumber, 50,000 cars.
Pig iron and pipe, 100,000 tons.
Cottonseed products, 50,000 tons.
Sugar, 6,000 cars.
Bananas, 11,000 cars.
Coffee, 50,000 tons.
Sisal, 60,000 tons.
Grain and grain products, 20,000 cars.
Imported freight, other than items already mentioned, 150,000 tons.

Affiant further says that of the traffic which has been enumerated, all of it is through traffic, increasing the earnings and value of the Kentucky lines, but not involving the use of terminals in the State of Kentucky, and that all of the traffic mentioned is dependent for its origin and delivery upon the existence of lines and terminals in other States, and that the import traffic, such as sisal, bananas, and other import traffic, is due to the existence of the very large and valuable terminals of the Illinois Central Railroad Company at New Orleans, without which the Kentucky lines of the Illinois Central Railroad Company would not enjoy the traffic, except in a comparatively small measure.

Affiant further says that the city of New Orleans does the third largest import business of any port in the United States.

Affiant further says that the lumber business is largely created by and in a considerable measure dependent upon the very
243 valuable terminals of the Illinois Central Railroad Company situated at Memphis, Tenn.; that Memphis, Tenn., is the largest market for hardwood lumber in the world.

Affiant further says that the grain traffic passing through the State of Kentucky over the lines of the Illinois Central Railroad Company is created in a great measure by the valuable terminals of that company situated in New Orleans and Memphis.

Affiant further says that, in addition to the traffic above mentioned, a very heavy traffic of lumber originating upon the lines and

terminals of the Illinois Central Railroad Company passes through the State of Kentucky by the Louisville gateway, being delivered at Louisville to other lines, this amounting for the calendar year 1913 to 8,093 cars.

Affiant further says that in addition to the traffic above mentioned a large amount of traffic originates in the State of Kentucky and moves via the New Orleans terminals of the company in export to foreign countries, the amount of this traffic for the twelve months ending November 30, 1913, being 1,753 cars; also that there is a large amount of coal originating in Kentucky which moves to and via the terminals at Memphis and New Orleans, the quantity per year being about 45,000 cars.

Affiant further says that the terminals of the said company situated in the city of Chicago are of great value, and by reason thereof a large traffic passes through the State of Kentucky from Chicago to Southern points, consisting of general merchandise, arti-
cles of iron and steel manufacture, furniture, and other kinds
244 of traffic, which, but for the terminals in the said city of Chicago belonging to this company, would, in a great measure, cease to move over the lines of this company through the State of Kentucky.

Affiant further says that, from a traffic point of view, the relative importance of the valuable terminals of the Illinois Central Railroad Company located on Southern lines are:

New Orleans,
Memphis,
Louisville,
Paducah,

and on Northern lines:

Chicago,
East St. Louis and St. Louis,
Omaha (including Council Bluffs),

and that none of the terminals of the Illinois Central Railroad Company situated in the State of Kentucky are as important, in the matter of originating and controlling freight traffic, as the terminals outside the State mentioned above.

Affiant further says that, although Louisville, Ky., is a great traffic center and important market, the best terminals in that city are owned by the Louisville & Nashville Railroad Company.

Affiant further says that the traffic originating in Kentucky consisting mostly of tobacco and coal, while in itself considerable, is inconsiderable in comparison with the large traffic originating upon other parts of the Illinois Central Railroad and passing through
the State of Kentucky, such as the through traffic already
245 mentioned; that the benefit of the terminals situated upon the Illinois Central Railroad outside the State of Kentucky to the volume of traffic in Kentucky is, in the opinion of affiant, very much greater than the benefit of the terminal situated in the State of Kentucky to the volume of traffic on those parts of the Illinois Central Railroad situated outside the State of Kentucky.

Affiant further says that according to the practice of American

railroads in prorating the earnings upon traffic between different railroad systems, it is not usually customary to allow anything for terminal expenses incurred, and that the result of the American practice of not making a separate charge for the use of the terminals operates in favor of the apparent earnings of lines located in States which lack large terminals or terminals expensive to operate, and against lines in States where terminals are costly and expensive to operate.

Affiant further says that in order to accurately ascertain the relative earnings of any particular State, the expense of operating the terminals therein should be considered.

D. W. LONGSTREET.

STATE OF ILLINOIS,
County of Cook, ss:

This day personally appeared before the undersigned, a Notary Public in and for the said State and County aforesaid, David W. Longstreet, whose signature appears above and is attached
246 hereto, and made oath that the statements made in the foregoing affidavit are true to the best of his knowledge and belief.

Given under my hand and seal at my office in Chicago, Ill., this 24th day of April, 1914.

[SEAL.] M. J. CONNELL,
Notary Public, Cook County, Ill.

247 The affidavit of Robert W. Bell of date April 23, 1914 referred to in Item 9 of Stipulation is as follows, to wit:

United States District Court for the Eastern District of Kentucky.

No. 731.

ILLINOIS CENTRAL RAILROAD COMPANY, Complainant,
versus
H. M. BOSWORTH, THOMAS RHEA, and C. F. CRECELIUS, Constituting the Board of Valuation and Assessment for the Commonwealth of Kentucky, Defendants.

(Filed May 4, 1914.)

STATE OF ILLINOIS,
County of Cook, ss:

Affiant, Robert W. Bell, says that he is and for about one year last past has been the General Superintendent of Motive Power of the Illinois Central Railroad Company; that he has had about twenty-five years' experience in the Mechanical Department of the same Company and has filled the following positions:

Machinist,
Locomotive Fireman,
Locomotive Engineer,
Traveling Engineer,

Round House Foreman,
248 General Foreman,
Master Mechanic,
Assistant Superintendent of Machinery,
Superintendent of Machinery,
General Superintendent of Motive Power.

Affiant further says that in his office are kept the records of all the rolling stock of the Illinois Central Railroad Company, showing the cost, extent of depreciation and the value thereof; that he is the proper person to make this affidavit; and that according to the said records the value of all the rolling stock of the Illinois Central Railroad Company, anywhere situated, on June 30, 1911, amounted to $38,256,118.00 and on June 30, 1912, to $39,185,545.00; and that said values are true and correct according to the best of his knowledge and belief.

Affiant further says that the schedules marked 1 and 2, hereto attached, show the description and number of each class or kind of rolling stock belonging to the Illinois Central Railroad Company, and show the average value and the total value of the same at the periods named.

Affiant further says that the method used in computing the value of such rolling stock is as follows: The original cost of each piece of equipment is depreciated, in the case of locomotives at the rate of four per cent per annum with a minimum of five hundred dollars as the scrap value, in the case of passenger cars at four per cent per annum with a minimum of five hundred dollars as the scrap value,
and in the case of freight cars at six per cent per annum
249 down to forty per cent of the original cost, when depreciation ceases entirely. That in the case of rolling stock the depreciation is figured in accordance with certain rules known as Master Mechanic and Master Car Builders' Rules, which are compiled and drawn from the experience of the various railroads of the country during a period of many years, and have been made by experts in the operation and building of locomotives and cars and persons familiar with the depreciation of rolling stock; that the depreciation computed in accordance with these rules represents the best practice and experience of the experts of the country engaged in the manufacture and care of rolling stock.

Affiant further says that in his opinion no fairer method has been suggested or devised of prorating the rolling stock operated upon the entire system of a railroad company, as between the different States, for the purposes of taxation, than to use in the case of locomotive engines the car mileage of such engines, in the case of passenger cars the car mileage and the passenger miles in each State, as compared with the entire system, and that the average of the result obtained by the two methods would, in his opinion, be probably nearer correct than the employment of either method alone, although the results of each of the two methods are not very different, and that, in his opinion, in the case of freight cars the prorating between States in accordance with the car mileage of such cars, or in accordance with the ton mile records of freight would be the fairest

methods, and that the average of the two methods, the results
250 of which do not greatly differ from each other, would be probably a nearer approximation of the correct result than the use of either method alone.

ROBERT W. BELL.

STATE OF ILLINOIS,
County of Cook, ss:

This day personally appeared before the undersigned, a Notary Public in and for the said State and county aforesaid, Robert W. Bell, whose signature appears above and is attached hereto, and made oath that the statements made in the foregoing affidavit are true to the best of his knowledge and belief.

Given under my hand and seal at my office in Chicago, Illinois, this 23d day of April, 1914.

M. J. O'CONNELL,
Notary Public, Cook County, Illinois.

251 EXHIBIT No. 1.

Schedule No. 2.

List Showing the Description and Number of Each Class or Kind of Rolling Stock Belonging to the Illinois Central Railroad Company, Showing the Average Value and the Total Value of the Same:

Description.	No.	Average.	Total value.
Locomotives—All Classes	1,321	$7,351.39	$9,711,183.00
Passenger Cars	496	2,913.41	1,445,050.00
Sleeping Cars	.....	.....	.....
Dining Cars	15	10,678.80	160,182.00
Cafe Cars	19	10,467.84	198,889.00
Parlor Cars	11	6,459.73	71,057.00
Chair Cars	68	6,276.84	426,825.00
Special Cars	12	6,803.00	81,636.00
Pay Cars	.....	.....	.....
Express Cars	145	2,333.06	338,294.00
Baggage, Mail and Express Cars	.....	.....	.....
Combination Cars	65	1,735.05	112,778.00
Box Cars	32,775	445.82	14,611,751.00
Stock Cars	797	244.58	194,930.00
Coal Cars	21,598	415.41	8,972,025.00
Flat Cars	2,457	367.64	903,291.00
Tank Cars	10	918.40	9,184.00
Ballast Cars	182	298.73	54,369
Caboose Cars	670	291.82	195,520.00
Dump Cars	.....	.....	.....
Pile Driver Cars	8	1,453.75	11,630.00
Wrecking Cars	24	2,746.29	65,911.00
Tool and Working Cars	1,547	150.00	232,050.00
Steam Shovel Cars	10	2,528.90	25,289.00
Push Cars	870	21.50	18,705.00
Hand Cars	870	28.50	24,795.00
All other kinds of Cars	389	316.09	122,958.00
Postal Cars	52	5,150.31	267,816.00
Total Value of Rolling Stock	.....	.....	$38,256,118.00

Class.	Total value.
Engines	$9,711,183.00
Passenger Cars	3,102,527.00
Freight Cars	25,442,408.00
	$38,256,118.00

Fiscal Year Ended June 30, 1911.

252 **EXHIBIT No. 2.**

Schedule No. 2.

List Showing the Description and Number of Each Class or Kind of Rolling Stock Belonging to the Illinois Central Railroad Company, Showing the Average Value and the Total Value of the Same:

Description.	No.	Average.	Total value.
Locomotives—All Classes	1,458	$8,305.45	$12,109,348.00
Passenger Cars	527	3,261.37	1,718,357.00
Sleeping Cars	.....	.....	.....
Dining Cars	17	11,530.29	196,015.00
Cafe Cars	19	10,049.11	190,933.00
Parlor Cars	14	9,398.21	131,575.00
Chair Cars	68	6,025.76	409,752.00
Special Cars	13	6,821.08	88,674.00
Pay Cars	.....	.....	.....
Express Cars	165	2,795.85	461,316.00
Baggage, Mail and Express Cars	.....	.....	.....
Combination Cars	70	2,180.86	152,660.00
Box Cars	29,834	420.24	12,537,445.00
Stock Cars	778	229.90	178,866.00
Coal Cars	21,777	410.53	8,940,194.00
Flat Cars	2,709	407.32	1,103,433.00
Tank Cars	10	863.30	8,633.00
Ballast Cars	179	280.81	50,265.00
Caboose Cars	659	284.99	187,808.00
Dump Cars	.....	.....	.....
Pile Driver Cars	8	1,366.50	10,932.00
Wrecking Cars	25	3,030.96	75,774.00
Tool and Working Cars	1,513	150.00	226,950.00
Steam Shovel Cars	9	2,377.22	21,395.00
Push Cars	870	21.50	18,705.00
Hand Cars	870	28.50	24,795.00
All other kinds of Cars	368	297.12	109,341.00
Postal Cars	41	5,667.78	232,379.00
Total Value of Rolling Stock	.....	.....	$39,185,545.00

Class.	Total value.
Engines	$12,109,348.00
Passenger Cars	3,581,661.00
Freight Cars	23,494,536.00
Total	$39,185,545.00

Fiscal Year Ended June 30, 1912

253 Affidavits referred to in Item 10 of Stipulation filed May 4, 1914 are not copied as same are included in Bill of Evidence prepared by respective counsel and approved by the court.

Affidavits referred to in Item 11 of Stipulation filed May 4, 1914 are not copied for same reason.

Exhibits with bill in case #769 not copied in case #731 but are copied immediately following Bill of Complaint in case #769.

254 On the same day to-wit on May 4, 1914 defendants filed two stipulations referred to in the foregoing order which are as follows, to-wit:

United States District Court for the Eastern District of Kentucky.

No. 731.

ILLINOIS CENTRAL RAILROAD COMPANY, Plaintiff,
versus
H. M. BOSWORTH, etc., Defendants.

Stipulation.

(Filed May 4, 1914.)

It is agreed between the party plaintiff and the parties defendant that the affidavits hereinafter set out shall be received and considered as proof in case No. 731 involving the assessment of plaintiff's franchise for the year 1912, and in case No. 769 involving plaintiff's franchise for the year 1913, the same as if the substance of said affidavits was contained in depositions legally taken under the law and rules of this court, the said affidavits being offered by the defendants, but the plaintiff reserves the right to object to the consideration of said affidavits solely upon the ground of incompetency or irrelevancy.

The affidavits above referred to are as follows:

1. Rufus Williams, ex-Assessor, Webster County.
2. W. J. Landrum, ex-Assessor, Breathitt County.
255 3. J. C. Pepples, ex-Assessor, Lincoln County.
4. H. F. Rodgers, ex-Assessor, Calloway County.
5. Noah B. Wooton, ex-Assessor, Leslie County.
6. J. A. Burres, ex-Assessor, Grayson County.
7. W. D. Curry, ex-Assessor, Green County.
8. C. C. McDonald, ex-Assessor, Knox County.
9. Boone Gosney, ex-Assessor, Campbell County.
10. T. G. Willis, ex-Assessor, Boone County.
11. W. T. Druen, ex-Assessor, Larue County.
12. Jno. A. Rice, J. F. Rice, Henry Thompson, W. E. Turner, ex-Deputy Assessors, Bell County.
13. R. H. Miller, ex-Assessor, Bullitt County.
14. T. W. Payne, ex-Assessor, Carlisle County.
15. J. M. Padgett, ex-Assessor, Scott County.
16. W. H. C. Seale, ex-Assessor, Lee County.
17. White Kemplin, ex-Assessor, Morgan County.
18. L. M. Van Bibber, ex-Assessor, Greenup County.
19. L. J. Harris, ex-Assessor, Christian County.
20. Geo. E. Allen, ex-Assessor, McCracken County.
21. Ben Jones, ex-Assessor, Bath County.
22. Kellie Beshears, ex-Assessor, Caldwell County.
23. T. C. Bradley, ex-Assessor, Fayette County.
24. James Proctor, ex-Assessor, Rockcastle County.
25. C. R. Marshall, ex-Assessor, Pendleton County.
26. W. R. Calbert, ex-Assessor, Trimble County.
27. J. M. Wolford, ex-Assessor, Adair County.

28. John Ingles, ex-Assessor, Harrison County.
29. G. O. Johnson, ex-Assessor, Ballard County.
30. Geo. W. Nicholas, ex-Assessor, Hickman County.
31. M. E. Lee, ex-Assessor, Hardin County.
32. Henry R. Childs, ex-Assessor, Mason County.
33. J. P. Mayfield, ex-Assessor, Pulaski County.
34. G. W. Brown, ex-Assessor, Hancock County.
35. J. M. Soarks, ex-Assessor, Robertson County.
36. Alex. Hamilton, ex-Assessor, Estill County.
37. Sheridan Gibbs, ex-Assessor, Johnson County.
38. B. W. Haynes, ex-Assessor, Meade County.
39. W. G. McClintock, ex-Assessor, Bourbon County.
40. Hubert Hinkle, ex-Assessor, Nelson County.
256 41. Elijah Hart, ex-Assessor, Fleming County.
42. M. Abele, ex-Assessor, Kenton County.
43. T. H. White, ex-Assessor, McLean County.
44. Levi Oliver, ex-Assessor, Lyon County.
45. Wiley S. Boyd, ex-Assessor, Graves County.
46. A. J. Silcox, ex-Assessor, Whitley County.
47. S. H. Byars, ex-Assessor, Todd County.
48. S. I. Taylor, ex-Assessor, Madison County.
49. C. W. Ramsey, ex-Assessor, Taylor County.
50. W. H. Bruner, ex-Assessor, Laurel County.
51. W. P. Johnson, ex-Assessor, Shelby County.
52. Edward A. Barry, ex-Assessor, Jefferson County.
53. Eugene Stark, ex-Assessor, Simpson County.
54. W. S. Blankenship, ex-Assessor, Boyd County.
55. J. R. Watkins, ex-Assessor, Marshall County.
56. F. R. Grisson, ex-Assessor, Monroe County.
57. L. D. B. Abele, ex-Assessor, Union County.
58. W. S. Carrier, ex-Assessor, Garrard County.
59. Robert H. Thomas, ex-Assessor, Union County.
60. Elzie Voorhies, ex-Assessor, Mercer County.
61. George Royalty, ex-Assessor, Breckinridge County.
62. Woodson Mills, ex-Assessor, Clay County.
63. L. G. Brown, ex-Assessor, Rowan County.
64. C. C. Mitchell, ex-Assessor, Floyd County.
65. S. F. Raymer, ex-Assessor, Edmonson County.
66. R. L. Mitchell, ex-Assessor, Anderson County.
67. Geo. M. Adams, ex-Assessor, Letcher County.
68. J. W. Mills, ex-Assessor, Casey County.
69. W. P. Johnson, ex-Assessor, McCreary County.
70. H. L. Jones, ex-Assessor, Metcalfe County.
71. C. A. Blandford, ex-Assessor, Marion County.
72. Columbus Cooper, ex-Assessor, Lewis County.
73. G. A. Crabtree, ex-Assessor, Powell County.
74. E. Cassity, ex-Assessor, Jessamine County.

M. M. LOGAN,
Ass't Att'y General, for Defendant.
BLEWETT LEE,
TRABUE, DOOLAN & COX,
For Plaintiff.

257 United States District Court, Eastern District of Kentucky.

Nos. 731, 769.

ILLINOIS CENTRAL RAILROAD COMPANY, Plaintiff,
versus
H. M. BOSWORTH etc., Defendants.

Stipulation.

(Filed May 4, 1914.)

It is stipulated between Illinois Central Railroad Company, plaintiff, and H. M. Bosworth, et al., defendants, that on final hearing in case- No. 731 and No. 769 between above-named parties, the following documents and affidavits hereinafter specified may be read in evidence and considered and treated without objection as evidence, the said affidavits of the affiants being treated as depositions of the affiants duly taken.

1. Affidavit of H. M. Bosworth filed on hearing for preliminary injunction.

2. Affidavit of T. S. Rhea filed on hearing for preliminary injunction.

3. Affidavit of C. F. Crecelius filed on motion for preliminary injunction.

258 4. Cross-examination of G. W. Lamb on hearing before the Board when considering assessment of L. & N. R. R. Co. for year 1913.

5. Any one affidavit that may be filed by defendant- controverting affidavit of G. W. Lamb filed in the L. & N. cases for 1913.

6. Report of Board of Equalization for 1904.

7. Auditor's report- for 1904 and 1905.

8. Report of Tax Commission appointed December 21, 1908.

9. Commercial Valuation of Railroads, Bulletin No. 21 Census Bulletin of date August 1, 1905.

10. Affidavit of A. B. Jones and reports thereto attached.

11. 61 and 62 Annual Report- of I. C. R. R. Co. to stockholders.

12. Affidavit of H. M. Bosworth on hearing for preliminary injunction in case No. 769.

13. Affidavits filed in L. & N. R. R. hearing before the Board of Valuation and Assessment, 1913, showing ratio of assessed value to real value of Kentucky property for 1912 and 1913.

W. M. LOGAN,
Ass't Att'y Gen'l, for Def'ts.
BLEWETT LEE,
TRABUE, DOOLAN & COX,
Att'ys for Pl'ff.

259 The seventy-four affidavits of ex-assessors referred to in derendants' stipulation filed on May 4, 1914 are not copied as

substance of same is embraced in Bill of Evidence prepared by counsel and approved by the court.

The affidavits of Bosworth, Rhea and Crecelius referred to in Items 1, 2 and 3 of Stipulation filed by defendants on May 4, 1914 are not re-copied being copied on pages —, —, and — of this record.

Cross-examination of G. W. Lamb, referred to in Item 4 of said Stipulation is not copied as substance of same is embraced in Bill of Evidence prepared by counsel and approved by the court.

Affidavit referred to in Item 5 of said Stipulation never filed.

Reports referred to in Items 6, 7, 8, and 9 of said Stipulation are not copied as substance of same is embraced in Bill of Evidence prepared by counsel and approved by the court.

Affidavit of A. B. Jones, referred to in said Stipulation *are* embraced in said Bill of Evidence prepared by the counsel and approved by the court. The reports attached thereto are copied on next page hereof.

260 *Report of the Illinois* Railroad *Central Railroad Company to the Auditor of Public Accounts of Kentucky, June* 30, 1908.

The Amount of Capital Stock, Preferred and Common, of said Corporation, Company, or Association as of Date June 30, 1908.

Preferred—None; Common	$95,040,000.00
Bonded indebtedness	$159,819,275.00
Other indebtedness	$42,119,613.82
Total indebtedness	$201,938,888.82

Rate of Interest paid 3 to 5 per cent.

State separately the total amount of gross and net earnings, or income of the said corporations, company or association, including interest on investments, and income from all other sources for twelve months next before June 30, 1908.

Gross earnings or income		$56,704,847.21
Less Expenses:		
Salaries	.....	
Wages & Expenses	38,456,947.12	
Interest and rents fixed	7,007,135.13	
Dividends	6,651,481.00	
Appropriated to renewal of equipment	1,046,963.00	
Maintenance of equipment	.....	
Depreciation	.....	
Other Expenses	3,410,753.35	
Total		$56,573,289.60
Net Income		131,557.61

261 Illinois Central Railroad Company.

Statement Showing Results of Operation of Whole Line and of the Road Located in Kentucky for the Year Ended June 30, 1908.

	I. C. system.	Kentucky.
Operating Revenues	$52,830,426.83	$6,604,469.13
Operating expenses	37,893,478.82	5,176,202.47
Net Operating Revenue	14,936,948.01	1,428,266.66
Outside Operations—Net Deficit	3,906.90	1,321.28
Total Net Revenue	14,933,041.11	1,426,945.38
Taxes	2,190,173.02	199,508.78
Operating Income	12,742,868.09	1,227,436.60
Other Income	3,878,327.28	92,793.31
Gross Corporate Income	16,621,195.37	1,320,229.91
Rents for lease of Other Roads	2,437,645.13	52,039.70
Other Rents	563,468.30	256,462.34
Interest on Funded Debt	4,569,490.00	897,708.99
Other Interest	1,053,240.06	.....
Other Deductions	2,261.62	161.13
Net Corporate Income	7,995,090.26	113,857.75
Appropriated to Renewal of Equipment	1,046,963.00	129,090.54
Suspended Claim Account.	165,078.65	.....
Net Applicable to Dividends	6,783,048.61	15,232.79 Def.

Additions and Betterments for the whole line aggregate $7,339,694.87, which was all charged to capital, additions and Betterments in Kentucky aggregate $268,895.38.

The foregoing is true and correct to the best of my knowledge, information and belief.

J. F. TITUS,
Assistant to the President.

STATE OF ILLINOIS,
County of Cook, ss:

Subscribed and sworn to before me this 30th day of September, 1908.

[SEAL.] GLEN N. ANDREWS,
Notary Public.

My Commission expires Aug. 15, 1909.

262 *Report of the Illinois Central Railroad Company to the Auditor of Public Accounts of Kentucky, June* 30, 1909.

The amount of capital stock, preferred and common, of the said corporation, company or association, as of date June 30, 1909:

Preferred—None; Common—$109,296,000.00.

Bonded Indebtedness	$179,819,275.00
Other Indebtedness	16,768,129.37
Total Indebtedness	195,587,404.37

Rate of Interest paid 3 to 5 per cent.

State separately the total amount of gross and net earnings, or income of said corporation, company or association, including interest on investments, and income from all other sources for twelve months next before June 30, 1909.

Gross earnings or income			$57,766,371.73
Less Expenses:			
Salaries	39,254,122.95	Op. Ex. & O. Rents.	
Wages & Expenses	7,697,981.44		
Dividends	7,642,995.50		
Enlargement of Plant			
Appropriated to replacement	232,266.92		
Depreciation			
Other Expenses	2,841,995.52		
Total			$57,669,362.33
Net Income			97,009.40

263 Illinois Central Railroad Company.

Statement Showing Results of Operation of the Whole Line and of Road Located in Kentucky for the Year Ended June 30, 1909.

	I. C. System.	Kentucky.
Operating Revenue	$53,672,336.28	$6,605,722.42
Operating Expenses	38,415,638.63	4,955,149.17
Net Operating Revenue	15,256,697.65	1,650,573.25
Outside Operations—Net Deficit	33,793.64	4,394.56
Total Net Revenue	15,222,904.01	1,646,178.69
Taxes	2,276,969.15	200,951.85
Operating Income	12,945,934.86	1,445,226.84
Other Income	4,127,829.09	79,697.09
Gross Corporate Income	17,073,763.95	1,524,923.93

Rents for Lease of Other Roads..	2,680,158.11	52,039.70
Other Rents	838,484.32	195,915.64
Interest on Funded Debt.....	5,017,823.33	897,703.69
Other Interest	361,059.44	
Other Deductions	126.93	
Net Corporate Income.....	8,176,111.82	379,264.90
Appropriated to Replacement of Equipment	232,266.92	28,615.28
Interest Paid on Tennessee Central R. R. Co. Securities During Option Period.....	203,840.00	44,600.19
Net Applicable to Dividends....	7,740,004.90	306.049.43

Additions and betterments for the whole line aggregate $1,435,-275.95 which was all charged to capital; additions and betterments in Kentucky aggregating $59,423.79.

The foregoing is true and correct to the best of my knowledge, information and belief

J. F. TITUS,
Assistant to the President.

STATE OF ILLINOIS,
County of Cook, ss:

Subscribed and sworn to before me this 20th day of September A. D., 1909.

[SEAL.] GLENN N. ANDREWS,
Notary Public.

My Commission expires August 14, 1913.

264 *Report of the Illinois Central Railroad Company to the Auditor of Public Accounts of Kentucky, June* 30, 1910.

The amount of Capital stock, preferred and common, of said corporation company or association, as of date June 30, 1910:

Preferred—None; Common—$109,296,000.00.

Bonded Indebtedness	$179,819,275.00
Other Indebtedness	15,466,905.03
Total Indebtedness	195,286,180.03

Rate of interest paid 3 to 5 per cent.

265 Illinois Central Railroad Company.

Statement Showing Results of Operation of the Whole Line and the Road Located in Kentucky for the Year Ended June 30, 1910.

	I. C. System.	Kentucky.
Operating Revenue	$57,884,721.09	$7,497,753.01
Operating Expenses	43,320,730.39	5,529,706.13
Net Operating Revenue	14,563,990.70	1,968,046.88
Outside Operations—Net Deficit	34,418.23	5,185.85
Total Net Revenue	14,529,572.47	1,962,861.03
Taxes	2,524,898.68	221,992.03
Operating Income	12,004,673.79	1,740,869.00
Other Income	4,065,104.59	86,365.79
Gross Corporate Income	16,069,778.38	1,827,234.79
Rents for Lease of Other Roads	2,041,526.22	52,039.70
Other Rents	653,979.52	283,004.29
Other Interest	57,284.96	
Other Deductions	64,330.00	
Interest on Funded Debt	5,369,490.00	897,689.29
Net Corporate Income	7,833,167.68	594,501.51

The foregoing is true and correct to the best of my knowledge, information and belief.

J. F. TITUS,
Assistant to the President.

STATE OF ILLINOIS,
County of Cook, ss:

Subscribed and sworn to before me this 29th day of September A. D., 1910.

[SEAL.] GLENN N. ANDREWS,
Notary Public.

My Commision expires August 14th, 1913.

266 62 annual report of I. C. R. R. Co., to stockholders copied in part as embraced in præcipe in case #769 but not copied in this case and 61 annual report of I. C. R. R. Co. to stockholders copied in part, as embraced in præcipe in this case being referred to in item 11 of defendants' Stipulation filed on May 4, 1914 and is as follows, to-wit:

Illinois Central Railroad Company.

Report of the Board of Directors.

To the Stockholders of the Illinois Central Railroad Company:

The Board of Directors herewith submit report covering the operations and the affairs of the Company for the year ending June 30, 1911.

The number of miles of railroad operated on June 30, 1910, was	4,550.54
On July 1, 1910, there was transferred from "Mileage of road leased to other companies" to "Mileage of road operated," the line Riverside Jct., Ill., to Harlem, Ill...	2.15
There was added on January 17, 1911, the mileage formerly operated as the Brookhaven & Pearl River R. R., from Brookhaven, Miss., to Monticello, Miss.....	23.40
The number of miles in operation on June 30, 1911, was.	4,576.09
The average number of miles operated during the year was	4,563.27

Income.

The following income account for the year is stated in accordance with the Company's returns to the Interstate Commerce Commission and for comparative purposes the account for the preceding year is re-stated.

	1911	1910	Increase + Decrease —
Average Miles operated during year	4,563 27	4,550 54 +	12 73
Operating revenues:			
Freight	$40,682,197 38	$38,777,758 45 +	$1,904,438 93
Bridge tolls and miscellaneous freight	3,132,190 02	3,093,636 52 +	38,553 50
Passenger	12,925,004 44	11,881,013 64 +	1,043,990 80
Bridge tolls and miscellaneous passenger	263,226 04	198,876 09 +	64,349 95
Mail	939,005 88	940,118 90 —	1,113 02
Express	1,524,416 15	1,540,218 94 —	15,802 79
Other passenger train	424,431 76	403,506 53 +	20,925 23
Other transportation	672,218 13	658,122 97 +	14,095 16
Revenue from operations other than transportation	414,341 69	391,469 05 +	22,872 64
Total operating revenues	60,977,031 49	57,884,721 09 +	3,092,310 40
Operating expenses:			
Maintenance of way and structures	7,523,295 47	7,607,891 43 —	84,595 96
Maintenance of equipment	12,317,364 33	13,502,249 72 —	1,184,885 39
Traffic expenses	1,334,163 08	1,246,381 57 +	87,781 51
Transportation expenses	21,333,834 75	19,734,910 53 +	1,598,924 22
General expenses	1,347,570 50	1,229,297 14 +	118,273 36
Total operating expenses	43,856,228 13	43,320,730 39 +	535,497 74
Net operating revenue	17,120,803 36	14,563,990 70 +	2,556,812 66

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Outside operations:			
Revenues	471,491 13	462,254 04 +	9,237 09
Expenses	527,955 37	496,672 27 +	31,283 10
Net deficit from outside operations	56,464 24	34,418 23 +	22,046 01
Total net revenue	17,064,339 12	14,529,572 47 +	2,534,766 65
Taxes accrued	2,671,290 22	2,524,898 68 +	146,391 54
Operating income	14,393,048 90	12,004,673 79 +	2,388,375 11
Other income	6,742,438 50	5,284,608 85 +	1,457,829 65
Gross corporate income	21,135,487 40	17,289,282 64 +	3,846,204 76
Deductions from gross corporate income	9,820,143 48	9,456,084 46 +	364,059 02
Net corporate income	11,315,343 92	7,833,198 18 +	3,482,145 74
Disposition of net corporate income:			
Dividends on capital stock	7,650,720 00	7,650,720 00	.....
Appropriated for additions and betterments	164,847 23	..... +	164,847 23
Balance transferred to credit of profit and loss	3,499,776 69	182,478 18 +	3,317,298 51

267 **Revenue.**

The business during the year has continued satisfactorily, and while the revenues for the preceding year were the largest in the Company's history up to that time, the revenues for the current year show substantial increases in practically all departments, the total operating revenues for the current year being $60,977,031.49 compared with $57,884,721.09, an increase of $3,092,310.40 or 5.34 per cent.

Revenue from the transportation of freight increased $1,904,438.93 or 4.91 per cent. The tons of revenue freight carried decreased from 27,588,277 tons to 27,489,564 tons. Table No. 13 shows the various commodities transported.

Revenue from the transportation of passengers increased $1,043,990.80 or 8.79 per cent. The increase in passenger traffic was general over the entire system, but the percentage of increase was somewhat greater on the Southern Lines than on the other portions of the system.

Table No. 12, furnishes general details of the freight and passenger traffic.

(Here follows Table 4, marked pages 268 and 269.)

(Here follows diagram marked page 270.)

Assets.	1911.
Property investment:	
Road and equipment:	
Investment to June 30, 1907	$95,188,5
Investment since June 30, 1907	19,155,0
Reserve for accrued depreciation—credit	2,803,8
Total road and equipment	$111,540,3
Securities:	
Securities of proprietary, affiliated and controlled companies—pledged	27,664,0
Securities of proprietary, affiliated and controlled companies—unpledged	18,460,8
Other investments:	
Advances to proprietary, affiliated and controlled companies for construction, equipment and betterments	04 792,2
Miscellaneous investments	44,352,9
Total property investment	$266,810,5
Working assets:	
Cash	$15,135,8
Securities issued or assumed—held in treasury	30,285,6
Marketable securities	2,326,9
Loans and bills receivable	223,1
Traffic and car-service balances due from other companies	73,4
Net balance due from agents and conductors	1,853,2
Miscellaneous accounts receivable	2,346,0
Material and supplies	3,935,0
Other working assets	
Total working assets	$56,159,4
Accrued income not due:	
Unmatured interest, dividends and rents receivable	$2,400,0
Deferred debit items:	
Advances	$1,784,5
Rents and insurance paid in advance	5,2
Special deposits	53,1
Cash and securities in insurance and other reserve funds	2,067,7
Cash and securities in provident funds	250,0
Other deferred debit items	608,8
Total deferred debit items	$4,769,5
Grand total	$330,139,5

Table 4.

Illinois Central Railroad Company.

Condensed General Balance Sheet.

June 30, 1911, and Comparison with Previous Year.

910.	Increase.	Decrease.	Liabilities.
			Stock:
			Common capital stock
88 585.07	.....	.....	Debenture 4% leased line stock
42,689.92	$2,612,926.50	.....	
45,810.97	.....	$1,558,048.84	Total stock
85,464.02	$1,054,877.66	.....	Mortgage, bonded and secured debt:
			Bonded debt
			Real estate mortgage
64,070.67	.....	.....	Total mortgage, bonded and secured de
06,042.48	.....	$1,245,134.69	Total capital liabilities
			Working liabilities:
			Loans and bills payable
79,968.17	9,212,259.08	.....	Traffic and car-service balances due to other c
95,650.65	.....	6,542,672.75	Audited vouchers and wages unpaid
			Miscellaneous accounts payable
31,195.99	$2,479,329.30	.....	Matured interest, dividends and rents unpaid
			Matured mortgage, bonded and secured debt
			Other working liabilities
00,721.33	$12,935,139.03	.....	
32,441.50	.....	$4,666,801.50	Total working liabilities
45,442.32	681,497.00	.....	
37,959.44	85,226.43	.....	Accrued liabilities not due:
94,556.86	.....	121,104.76	Unmatured interest, dividends and rents pays
24,184.37	229,038.50	.....	Taxes accrued
45,667.53	.....	499,574.42	
84,977.66	.....	549,948.08	Total accrued liabilities not due
2,453.60	.....	2,453.60	
			Deferred credit items:
68,404.61	$8,091,018.60	.....	Operating reserves
			Liability on account of provident funds
			Other deferred credit items
92,365.39	$2,107,661.54	.....	Total deferred credit items
			Grand total liabilities
97,283.18	.....	$412,699.50	
.....	$5,276.42	.....	Appropriated surplus:
53,172.04	.....	.....	Additions to property since June 30, 1907, th
45,801.43	.....	1,478,099.85	Reserve for insurance fund
50,000.00	.....	.....	Reserves from income or surplus for dividen
37,590.28	.....	228,765.39	
			Profit and loss:
83,846.93	.....	$2,214,288.32	Balance
75,812.92	$10,463,721.12	.....	Grand total

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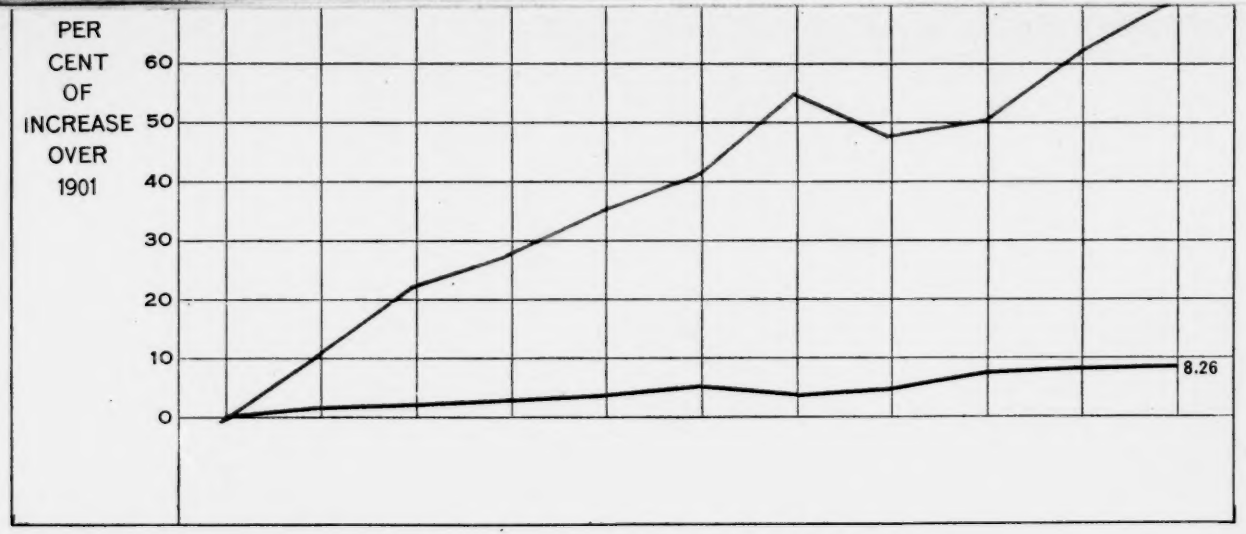
	1911.	1910.	Increase.	Decrease.
	$109 296,000.00	$109,296,000.00	.....	.....
	9,989,700.00	9,989,700.00	.....	.....
	$119,285,700.00	$119,285,700.00	.....	.....
	$187,351,000.00	$181,144,275.00	$6,206,725.00	.....
	100,000.00	.....	100,000.00	.....
	$187,451,000.00	$181,144,275.00	$6,306,725.00	.....
	$306 736,700.00	$300,429,975.00	$6,306,725.00	.....
	$200,000.00	$400,000.00	.....	$200,000.00
apaules	249,186.61	197,222.56	$51,964.05	.....
	5,237,996.97	5,077,904.86	160 092.11	.....
	163,163.26	161,483.12	1,680.14	.....
	1,397,197.55	1,359,975.35	37,222.20	.....
paid	10,146.97	11 474.29	.....	1,327.32
	222,224.08	103,864.67	118,359.41	.....
	$7,479,915.44	$7,311,924.85	$167,990.59	.....
le	$5,246,584.80	$4,613,651.46	$632 933.34	.....
	277,387.12	272,521.11	4,866.01	.....
	$5,523,971.92	$4,886,172.57	$637,799.35	.....
	$317,359.38	$302 861.86	$14,497.52	.....
	261,278.79	263,215.73	.....	$1,936.94
	803,795.01	102,218.30	701,576.71	.....
	$1,382,433.18	$668,295.89	$714,137.29	.....
	$321,123,020.54	$313 296,368.31	$7,826,652.23	.....
ugh income	164,847.23	.....	164,847.23	.....
	2,067,701.58	2,036,464.51	31,237.07	.....
	.....	1,509,336.92	.....	$1,509,336.92
	6,783,964.69	2,833,643.18	3,950,321.51	.....
	$330,139,534.04	$319,675,812.92	$10,463,721.12	.....

ILLINOIS CENTRAL RAILROAD COMPANY

Table 15 **Gross Transportation Revenue and Miles of Railway Operated**

Showing by years the per cent. of increase over the year ended June 30, 1901, in gross transportation revenues and the per cent. of increase in the average miles of railway operated during the year.

YEAR	GROSS TRANSPORTATION REVENUES	MILES OF ROAD
1901	$ 35,978,649.02	4,214.92
1902	" 39,903,382.04	4,276.23
1903	" 44,163,606.47	4,292.98
1904	" 46,071,503.77	4,340.35
1905	" 48,898,901.65	4,373.91
1906	" 50,875,770.06	4,423.87
1907	" 55,851,846.46	4,370.77
1908	53,172,808.65	4,420.46
1909	" 53,999,091.03	4,547.41
1910	" 58,346,975.13	4,550.54
1911	" 61,448,522.62	4,563.27


PER CENT OF INCREASE OVER 1901
60
50
40
30
20
10
0
8.26
270
Miles of Road
Gross Transportation Revenues

271 Affidavit of H. M. Bosworth referred to in Item 12 of said Stipulation not filed.

Affidavits referred — in Item 13 of said Stipulation filed May 4, 1914, not copied as same are included in Bill of Evidence prepared by counsel and approved by the court.

On June 8, 1914, the following order was made and entered herein, to-wit:

#731.

ILLINOIS CENTRAL RAILROAD COMPANY
vs.
H. M. BOSWORTH et al.

On motion of the plaintiff, by its attorneys, consented to by the defendants, by their attorneys, the affidavit of M. P. Blauvelt filed in Clerk's office of this Court on May 29, last together with the exhibits therewith are now and hereby filed nunc pro tunc as of May 4, 1914.

Cam- again the parties by their respective attorneys and filed a stipulation in reference to the evidence of John E. Garner, which stipulation is approved by the Court and the agreements therein made authorized accordingly.

Said affidavit of Martin P. Blauvelt filed by the foregoing order as of May 4, 1914, is as follows, to-wit:

272 United States District Court for the Eastern District of Kentucky.

Nos. 731 and 768.

Consolidated.

ILLINOIS CENTRAL RAILROAD COMPANY, Complainant,
versus
H. M. BOSWORTH, THOMAS RHEA and C. F. CRECELIUS, Constituting the Board of Valuation and Assessment for the Commonwealth of Kentucky, Defendants.

(Filed in Clerk's Office May 29, 1914, and by Order of Court, June 8, 1914.)

STATE OF ILLINOIS,
County of Cook, ss:

Affiant, Martin P. Blauvelt, says that he is the Comptroller of the Illinois Central Railroad Company and the same person who has made the affidavits in the above causes and has testified in regard to the value of the franchise of the said complainant, as computed by the stock and bond method.

Affiant further says that the court having intimated that a dif-

ference might possibly arise as to the situs for taxation of
273 stocks, bonds, cash, notes, advances and miscellaneous property not derived from railroad operations or used for railroad purposes, as distinguished from items arising from railroad operations, and that this difference might affect the result of the computations hereinbefore presented in the said cause as exhibits setting forth the claims of the said complainant in regard to its taxable values situated in the State of Kentucky, affiant has caused to be made a true and correct statement showing the amounts of bonds, stocks, cash, notes, advances and miscellaneous property not derived from railroad operations or used for railroad purposes located outside and having their situs outside of the State of Kentucky on June 30, 1911, marked Exhibit (*a*), a copy of which is attached to this affidavit and made a part hereof; also a true and correct statement, marked Exhibit (*b*), of the items arising from railroad operations for the fiscal year ending June 30, 1911, included in Exhibit No. —, heretofore filed in this cause, but excluded in the foregoing statement just referred to, marked Exhibit (*a*); and has also caused to be made a true and correct calculation based upon the stock and bond method in the first case aforesaid, No. 731, in regard to the return data for the fiscal year ending June 30, 1911, and the 1912 assessment, a copy of which is attached to this affidavit and made a part hereof, marked Exhibit (*c*); and in like manner a true and correct statement showing the amounts of stocks, bonds, cash, notes, advances and miscellaneous property not derived from railroad operations or used for railroad purposes located and
274 having their situs outside the State of Kentucky on June 30, 1912, marked Exhibit (*d*), a copy of which is attached to this affidavit and made a part hereof; also a true and correct statement, marked Exhibit (*e*), of the items arising from railroad operations for the fiscal year ending June 30, 1912, included in Exhibit No. — heretofore filed in this cause, but excluded in the foregoing statement just referred to, marked Exhibit (*d*); and has also caused to be made a true and correct calculation based upon the stock and bond method in the second case aforesaid, No. 768, in regard to the return data for the fiscal year ending June 30, 1912, and the 1913 assessment, a copy of which is attached to this affidavit and made a part hereof, marked Exhibit (*f*).

Affiant further says that the result of the said calculations above referred to is, upon the basis of the stock and bond method as shown in the said exhibits and calculations, that nothing remains for assessment over and above the assessment of tangible property already made and paid to the proper authorities of the State of Kentucky and to the various counties and municipalities thereof, for the said years 1912 and 1913, based upon the said fiscal years ending June 30, 1911, and June 30, 1912, respectively.

MARTIN P. BLAUVELT.

STATE OF ILLINOIS,
County of Cook, ss:

This day personally appeared before the undersigned, a Notary

Public in and for the State and county aforesaid, Martin P.
275 Blauvelt, whose signature appears above and is attached hereto, and he made oath that the statements made in the foregoing affidavit are true to the best of his knowledge and belief.

Given under my hand and seal at my office in Chicago, Ill., this 13th day of May, 1914.

[SEAL.]

P. S. HANNAGAN,
Notary Public, Cook County, Ill.

276 EXHIBIT (A).

Illinois Central Railroad Company.

Statement Showing Amounts of Stocks, Bonds, Cash, Notes, Advances and Miscellaneous Property Not Derived from Railroad Operations or Used for Railroad Purposes Located Outside and Having Their Situs Outside of the State of Kentucky on June 30, 1911:

Stocks.

Items.	Cost or book value.
Jackson Realty Co., Ltd	$5,000.00
Prudential Realty Co., Ltd	5,000.00
Central of Georgia Ry' Co	3,474,249.02
Chicago Union Transfer R'y Co	40,000.00
Auditorium Co.	1,000.00
Ben Clare Telephone Co	50.00
United States Rail Co	838.00
Commonwealth Trust Co	7,000.00
Bethlehem Steel Corporation	2,000.00
Marcus Water Works Association	30.10
Mississippi Valley Company	43,125.00
Mississippi Valley Corporation	5,000.00
Indianapolis Southern R. R. Co	128,998.95
Total	$3,712,291.07

277 Bonds.

Indianapolis Southern 1st Mortgage Gold of 1956	$8,777,289.86
Yazoo & Mississippi Valley R. R. Co. Gold 5% of 1952	2,324,488.18
Yazoo & Mississippi Valley R. R. Co. 4% Gold Improvement Bonds and Scrip	5,911,710.07
Peoria & Pekin Union R'y Co. 5% Debenture Bonds	156,500.00
Southern Illinois & Missouri Bridge Co. 4% Bonds of 1951	600,000.00
Tennessee Central R. R. Co. Prior Lien 4% of 1934	1,338,000.00
Homewood Country Club 1st Mtge. 5% of 1927	2,400.00
Total	$19,110,388.11

Cash.

Proceeds of Sale of Bonds	$10,406,700.00

Notes.

Nashville Terminal Realty Co. Notes	$346,102.67
Chicago Union Transfer R'y Co. Judgment Notes	99,121.22
Bills Receivable (New York)	42,000.00
Bills Receivable (Chicago)	4,000.00
Bills Receivable (Land Notes)	70,895.96
Total	$562,119.85

Advances.

Memphis R. R. Terminal Co	$113,970.00
Madison Coal Corporation	1,859,000.00
Omaha Bridge & Terminal Railway Co	1,750,000.00
Mississippi Valley Corporation	3,137,490.27
Mississippi Valley Company	2,500.00
Yazoo & Mississippi Valley R. R. Co	1,653,510.20
Indianapolis Southern R. R. Co	119,464.94
Total	$8,635,935.41

Miscellaneous Properties.

Advances account Tennessee Central R. R	$1,328.19
Real Estate adjacent to Tennessee Central R. R.—Outside Kentucky	77,062.03
Real Estate, Chicago and vicinity	256,060.02
Flossmoor Subdivision	116,509.28
Material Leased—Outside Kentucky	157,700.29
Total	$608,659.81

Accounts.

Accounts Receivable in Suspense	$52,529.82
Taxes—Advances account land sales	3,611.91
Total	$56,141.73
Grand Total	$43,092,235.98

278 Exhibit B with affidavit of Martin P. Blauvelt is as follows, to-wit:

EXHIBIT (B).

Items Arising from Railroad Operations, June 30, 1911, Included in Exhibit No. —, Heretofore Filed in Court, but Excluded in Foregoing Statement:

Traffic and Car Service Balances due from Other Companies	$73,452.10
Station Claims in Suspense	104,352.71
Foreign Roads Traffic Claims in Suspense	232,040.68
Freight Claim Agent	44,259.80
Miscellaneous Bills for Collection	1,909,209.00
Due from Foreign Roads account of Traffic Claims	110,269.43
United States Post Office Department	100,860.50
American Express Company	140,092.40
Individuals and Companies for Rents	13,316.65
Individuals and Companies for Advertising	16,203.40
Bills Receivable (Chicago Office)	106,289.91
Cash	4,616,417.80
	$7,466,764.38

279 Exhibit C with affidavit of Martin P. Blauvelt is as follows, to-wit:

EXHIBIT (C).

Revised Calculation, Stock and Bond Method.

1911 Return and Data.

1st Case—No. 731.

	1912 assessment.
Stock and Bond Method:	
Market Value at average quotations of all Stock and Bonds Outstanding, not in Company's Treasury, and excluding investments in Securities of the L. N. O. & T. Railway	$296,249,519
Less Cost or Book Value of stocks, bonds, cash, notes, advances and miscellaneous property not derived from railroad operations or used for railroad purposes, located and having their situs outside the State of Kentucky	43,092,236
Balance to prorate	253,157,283
Kentucky mileage prorate	12.3%
	31,138,346
61% a/c Excess Value Outside Kentucky	61%
	18,994,391
Equalize at 60%	60%
	11,396,635
Tangible	**12,381,773**

280 Exhibit D with affidavit of Martin P. Blauvelt is as follows, to-wit:

EXHIBIT (D).

Illinois Central Railroad Company.

Statement Showing Amounts of Stocks, Bonds, Cash, Notes, Advances and Miscellaneous Property Not Derived from Railroad Operations or Used for Railroad Purposes Located and Having Their Situs Outside of the State of Kentucky on June 30, 1912.

Stocks.

Items.	Cost or book value.
Jackson Realty Co., Ltd.	$5,000.00
Prudential Realty Co., Ltd.	5,000.00
Central of Georgia R'y Co.	3,474,249.02
Central Fruit Despatch	1,500,000.00
Chicago Union Transfer R'y Co.	40,000.00
Auditorium Co.	1,000.00
Ben Clare Telephone Co.	50.00
United States Rail Co.	838.00
Commonwealth Trust Co.	7,000.00
Marcus Water Works Association	30.10
Mississippi Valley Company	43,125.00
Mississippi Valley Corporation	5,000.00
Total	$5,081,292.12

281 Bonds.

Yazoo & Mississippi Valley R. R. Co. Gold 5% of 1932	$2,324,488.18
Yazoo & Mississippi Valley R. R. Co. 4% Gold Improvement Bonds and Scrip	6,219,473.28
Peoria & Pekin Union R'y Co. 5% Debenture Bonds	244,000.00
Southern Illinois & Missouri Bridge Co. 4% Bonds of 1951	600,000.00
Tennessee Central R. R. Co. Prior Lien 4% of 1934	1,338,000.00
Central of Georgia R'y Co. 1st Pref. Inc. Bonds of 1945	3,848,189.25
Central of Georgia R'y Co. 2d Pref. Inc. Bonds of 1945	6,589,475.29
Central of Georgia R'y Co. 3d Pref. Inc. Bonds of 1945	4,015,685.81
Homewood Country Club 1st Mtge. 5% of 1927	2,400.00
Total	$25,181,711.81

Notes.

Nashville Terminal Realty Co. Notes	$343,125.17
Chicago Union Transfer R'y Co. Judgment Notes	99,121.22
Tennessee Central R. R. Co. Notes	92,032.62
Bills Receivable (New York)	705,000.00
Bills Receivable (Chicago)	8,500.00
Bills Receivable (Land Notes)	45,359.96
Bills Receivable (Flossmoor)	8,038.79
Total	$1,301,177.76

Advances.

Memphis R. R. Terminal Co	$112,147.22
Yazoo & Mississippi Valley R. R. Co	2,711,163.57
Madison Coal Corporation	1,859,000.00
Mississippi Valley Corporation	3,025,850.52
Mississippi Valley Company	39,499.25
Southern Property Company	5,357.85
Total	$7,753,018.41

Miscellaneous Properties.

Real Estate adjacent to Tennessee Central R. R.—Outside Kentucky	$77,062.03
Real Estate, Chicago and vicinity	145,771.40
Material leased—Outside Kentucky	223,640.18
Total	$446,473.61

Accounts.

Accounts Receivable—Flossmoor Subdivision	$151,313.53
Taxes—Advances account of Land Sales	2,110.65
Accounts Receivable in Suspense	732,039.19
Total	$885,463.37
Grand Total	$40,649,137.08

282 Exhibit E with affidavit of Martin P. Blauvelt is as follows, to-wit:

EXHIBIT (E).

Items Arising from Railroad Operations, June 30, 1912, Included in Exhibit No. —, Heretofore Filed in Court, but Excluded in Foregoing Statement.

Station Claims in Suspense	$26,611.50
Foreign Roads Traffic Claims in Suspense	93,883.90
Freight Claim Agent	324.54
Miscellaneous Bills for Collection	3,346,886.46
Due from Foreign Roads Account of Traffic Claims	84,317.57
United States Post Office Department	118,434.98
American Express Company	136,650.48
Individauls and Companies for Rents	22,137.35
Individuals and Companies for Advertising	15,581.30
New York Office—Bills for Collection	101.29
Bills Receivable (Chicago Office)	47,741.65
Cash	2,295,057.79
	$6,187,728.81

283 Exhibit F with affidavit of Martin P. Blauvelt is as follows, to-wit:

EXHIBIT (F).

Revised Calculation, Stock and Bond Method.

1912 Return and Data.

2nd Case—No. 768.

Stock and Bond Method:	1913 assessment.
Market Value at average quotations of all Stock and Bonds Outstanding, not in Company's Treasury, and excluding investments in Securities of the L., N. O. & T. Railway	$299,058,719
Less Cost or Book Value of stocks, bonds, cash, notes, advances and miscellaneous property not derived from railroad operations or used for railroad purposes, located and having their situs outside the State of Kentucky	40,649,137
Balance to prorate	258,409,582
Kentucky mileage prorate	12.3%
	31,784,379
61% a/c Excess Value outside Kentucky	61%
	19,388,471
Equalize at 60%	60%
	11,633,083
Tangible	12,478,903

284 Stipulation as to evidence of John Garner filed by foregoing order of June 8, 1914, is as follows, to-wit:

United States District Court, Eastern District of Kentucky, at Frankfort.

No. 731.

ILLINOIS CENTRAL RAILROAD COMPANY, Complainant,
versus
HENRY M. BOSWORTH et al., Defendants.

No. 769.

ILLINOIS CENTRAL RAILROAD COMPANY, Complainant,
versus
HENRY M. BOSWORTH et al., Defendants.

(Filed in Clerk's Office May 29, 1914, and by Order of Court June 8, 1914.)

It is stipulated between complainant and defendants that the evidence of John E. Garner given in open court this June 8, 1914, in the cases of Louisville & Nashville Railroad Company, Chesapeake & Ohio Railway Company and Cincinnati, New Orleans & Texas Pacific Railway Company v. the defendants herein, shall be read in evidence in the cases mentioned in the caption, subject to the same exceptions as in the cases in which said witness testified.

TRABUE, DOOLAN & COX,
Counsel for Complainant.
M. M. LOGAN,
Ass't Att'y General, for Defendants.

The Evidence of John E. Garner referred in the foregoing Stipulation is embraced in the Bill of Evidence herein.

285 On August 31, 1915, the following order was made and entered herein, to-wit:

#731.

ILLINOIS CENTRAL RAILROAD COMPANY
vs.
H. M. BOSWORTH et al.

The foregoing case having been generally submitted, and the court having duly considered same and being sufficiently advised filed its written opinion herein, and the attorneys in said case will prepare and submit to the court an order drawn in accordance with said opinion.

Said opinion of the Court filed on August 31, 1915, is as follows to-wit:

286 United States District Court, Eastern District of Kentucky.

#731.

ILLINOIS CENTRAL RAILROAD COMPANY, Plaintiff,

vs.

H. M. BOSWORTH, THOMAS S. RHEA, and C. F. CRECILIUS, Individually and as Constituting the Board of Valuation and Assessment of the State of Kentucky; H. M. Bosworth, Auditor of Public Accounts of the State of Kentucky; G. B. Likens, Assistant Auditor of Public Accounts of the State of Kentucky; James Garnett, Attorney General of the State of Kentucky; C. H. Morris, First Assistant Attorney General of the State of Kentucky; M. M. Logan, Second Assistant Attorney General of the State of Kentucky; O. S. Hogan, Third Assistant Attorney General of the State of Kentucky; Victor A. Bradley, Commonwealth's Attorney for the Franklin Circuit Court, and W. C. Marshall, County Attorney of Franklin County, State of Kentucky, Defendants.

Filed Aug. 31, 1915. J. W. Menzies, U. S. Clerk.

This suit is before me for final decree. The plaintiff seeks thereby an injunction against the enforcement of the assessment of its franchise in this state for the year 1912. The amount of the assessment is $14,746,857. I have heretofore sustained a motion for preliminary injunction and on that occasion I delivered an opinion which is reported in 209 Fed. 465. I have also had before me for final decree a suit involving the assessment for the year 1913 amounting to $11,200,277 in which I have delivered an opinion.

There is nothing left in this case but to make a final disposition of plaintiff's attack, on the assessment complained of, that it was contrary to the 14th amendment. In granting the preliminary injunction I took it that the Board had found the fair cash value of the portion of plaintiff's capital stock in this state to be $27,124,240 and equalized it on the basis of 70 per cent. I have held that the equalization should be on the basis of 60 per cent. But correction should also be made in the matter of the sum which the Board found

287 the fair cash value of such portion to be. This is difficult to determine as the Board's minute of its action discloses no more than the sum at which it fixed its franchise. It is complicated by the fact that in the supplemental affidavit of defendant Bosworth it is stated that the Board fixed such fair cash value at $35,046,202, whereas in defendants' answer herein the allegation is that it fixed it at $36,900,000. The plaintiff alleges that the Board arrived at the sum of $27,124,240 as the value of such portion by taking 80 per cent of what it had found to be the fair cash value thereof to be and that it had ascertained such fair cash value by

capitalizing at six per cent what it took to be plaintiff's net income in Kentucky. If such is the way the Board arrived at the sum of $27,124,240, then it found the fair cash value of such portion to be $33,905,300. The evidence sustains this position. The affidavit of Mr. Tarbet states that he enquired of defendant Bosworth as to how the Board had arrived at plaintiff's assessment—that he referred him to Mr. Rich—and that Mr. Rich told him that it was found by averaging the operating income of plaintiff in Kentucky for the years ending June 30th, 1910, and June 30th, 1911—capitalizing the average thus arrived at at six per cent—and equalizing such capitalization at 80 per cent and deducting from the result thereof the assessment of the tangible property. This affidavit is not contradicted and it is confirmed by the fact that 80 per cent of the sum which the average operating income so derived by plaintiff for those two years capitalized at six per cent is $27,124,246.40, or only $6.40 more than the sum at which the Board fixed the value of such portion. I think I am justified, therefore, in taking it that the Board fixed the fair cash value thereof at $33,905,300. Though it did not arrive at it by the statutory method, such was the result of its application thereto of the standard of fair cash value. 60 per cent thereof is $20,343,180. Deduct $12,377,383, leaves $7,965,797 as the value of the franchise. Deduct $6,618,585 on which plaintiff has already paid leaves $1,347,212 on which it has not paid.

The plaintiff is entitled to a decree enjoining the enforcement of the assessment for 1912, except to the extent of $1,347,212.

A. M. J. COCHRAN, *Juege.*

Aug. 31, 1915.

See 230 Fed. R., p. 191.

288 On September 27, 1915, the following order was made and entered herein, to-wit:

#731.

ILLINOIS CENTRAL RAILROAD COMPANY
vs.
H. M. BOSWORTH et al.

Upon the call of the Civil Docket of this Court on this date it is ordered that this case be and the same is hereby passed and in the event no order is made therein the case is hereby continued.

On December 1, 1915, the following petition for re-hearing or modification was filed herein, to-wit:

District Court of the United States, Eastern District of Kentucky.

No. 731.

ILLINOIS CENTRAL RAILROAD COMPANY, Complainant,
versus
HENRY M. BOSWORTH et al., Defendants.

Petition for Rehearing or Modification.

We hope to indicate such points as justify us in asking a modification of the court's rulings notwithstanding so painstaking a study of the case by the court. The defendants assessed complainant at $14,746,857, the sum left after deducting the assessed value of the tangible property, $12,377,383.00 from $27,124,240.

The defendants fixed $27,124,240.00 as the fair cash value of complainant's capital stock for Kentucky, and this court has held in all cases just decided that the complainants are entitled to equalization at 60% or less. It seems, therefore, to result that no assessment could properly be made at exceeding $16,274,544; so that after deducting the valuation of the tangible property, $12,377,383 there would remain as franchise value only $3,897,161, and by preliminary order complainant was required to pay and did pay
289 taxes upon an assessment of $6,618,585. There could, therefore, properly be no further assessment.

By the instant opinion complainant is required to pay upon a further, or additional, assessment of $1,347,212.

The additional assessment is, by the court, reached by treating $27,124,240—the actual fair cash value as determined by the defendant—as only 80% of such fair cash value, so that the fair cash value instead of being $27,124,240 as found by defendants, would be $33,905,300. The court has equalized at 60% the latter sum, viz.: $33,905,300, and permitted an assessment based upon 60% of said sum, to-wit: $20,343,184 instead of $16,274,544, 60% of $27,124,240.

The court says that it is difficult to determine the sum which the defendants found to be the fair cash value

"as the Board's minute of its action discloses no more than the sum at which it fixed its franchise."

Also, the court recognized that the Board "did not arrive at it (assessment) by the statutory method."

Nevertheless, the court adds to the fair cash value as found by the defendants, $6,781,060 upon the assumption that the amount found by the defendants to be the fair cash value, $27,124,240 was only 80% of the fair cash value, to-wit: $33,905,300, an amount not found by the defendants at all.

We submit that either we are entitled to equalization at 60% of $27,124,240, or to a new assessment because

"the Board's minute of its action discloses no more than the sum at which it fixed"

290 the franchise, and the Board

"did not arrive at it by the statutory method."

As "the statutory method" was not pursued the 20% reduction of the result of the method adopted was of no effect in law, any manipulation of an arbitrary method being futile, for the method remains arbitrary.

Moreover, whatever the method was, defendants adopted 80%, and not 100% of the result, and declared that the 80% of such result was the fair cash value, i. e., 100% of value.

In some of the other cases submitted with this case the court has promptly repudiated results reached by adding the assessment of tangible property to amounts arbitrarily reached. In other words, an arbitrary assessment is no assessment, and an assessment by other than the statutory method is necessarily arbitrary. Franchise assessment is not like the assessment of a house or a horse, as this court has heretofore decided, and it is because of such difference in conditions that the statute declares a method of assessment, viz., valuation of total capital and apportionment upon the statutory basis; which must be modified by Due Process and Equal Protection, of course.

We claim that the court, even upon the hypothesis upon which its opinion is based labors under a misapprehension of the acts of defendants, for defendants did not find the fair cash value to be $33,905,300, but found it to be $27,124,240—by a method which was not statutory. Non constat that defendants would have found the value to be what the court now finds it, viz.: $33,905,300.

291 True, defendants took what they called the net earnings of complainant for Kentucky for the year ended June 30, 1911, and the next preceding year and capitalized the average at 6% and adopted as the fair cash value of complainant's capital stock for Kentucky $27,124,240, 80% of the result of the capitalization, but we submit that this is no basis for adopting as a final assessment the sum reached by capitalizing the average of two years Kentucky earnings; either a new assessment, which would be "statutory" should be ordered or if complainant so elect the sum fixed by defendants as the fair cash value should be equalized at 60%.

The basis of the court's action is that complainant alleged in its bill (p. 14) that the Board had capitalized the average of the two years earnings and assumed to equalize the result with other property

"by taking 80% thereof as the value of complainant's franchise in Kentucky," etc., etc.,

but the defendants denied such allegation (as is hereinafter indicated) and complainant accordingly withdrew the averment. The case stands, therefore, upon the facts as shown by the evidence, and not upon allegations in the pleadings of either party. See amended bill filed 16th day of April, 1914 (Aff. and other Evid., p. 45).

Complainant's withdrawal of the allegation was after and in accordance with defendants' denial (Aff. and other Evid., p. 25) that they

"took the so-called net earnings of complainant for the State
292 of Kentucky for the year ending June 30, 1911, and for the next preceding year and averaged them and capitalized the result or amount thus secured at six per cent per annum and assumed to equalize the amount thus obtained, with other property in the State of Kentucky, by taking eighty per cent thereof as the value of complainant's franchise in Kentucky."

Following such denial defendants allege that the State Constitution and statutes require assessment at its

"fair cash value, estimated at the price it would bring at a fair voluntary sale," etc., etc. (p. 25),

and aver (p. 26) that

"it would be unlawful for the defendants to intentionally or knowingly assess the franchise of complainant and the franchises of all other corporations at sixty per cent of their fair cash values estimated at the price they would bring at a fair voluntary sale, and if defendants should knowingly and intentionally or willfully do so, they would under the law of Kentucky be guilty of the crime of misfeasance, liable to indictment and conviction, which would subject them to heavy penalties and in addition thereto work a forfeiture of office."

Accordingly it results that defendants did not make an equalization at all, either at 80% or any other per cent, but considered equalization to be a penal offense; but defendants did take 80% of the sum resulting from the capitalization at 6% of the average of two years Kentucky earnings. The defendants adopted such sum, however (80% of the result of the capitalization), as the fair cash value, and avowedly so. Complainant is, therefore, entitled to equaliza-
293 tion at 60% of the sum declared by defendants to be the fair cash value, or entitled to a new assessment according to "statutory" method. The report which defendants made of their methods is found in their answer (pp. 33, 34) and after reciting the results of certain processes the Board declares (p. 34),

"and upon consideration of the value of that proportion of the capital stock of complainant which the mileage of complainant in Kentucky bears to the mileage of complainant within and without Kentucky, the said Board, to the end that no injustice might be done complainant, by the Board overvaluing its franchise for taxation, at the same time being anxious and determined to faithfully discharge their official duties as assessors, fixed and determined the value of that part on proportion of the capital stock of complainant in Kentucky at $27,124,240."

This declaration by defendants is exactly analagous to similar declarations made concerning the assessment for the next succeeding year, and the assessments of the franchises of the other companies where the phrase just quoted with reference to complainant's assessment for 1912 had become crystallized into the phrase men-

tioned in case No. 775, C. & O. Ry. v. Bosworth, p. 2, where this court said:

"I take it for granted that the Board's minute accounts for the reduction in the same way in which it accounts for like reductions in the assessments of the Louisville & Nashville, Illinois Central and Cincinnati, New Orleans & Texas Pacific Railroad Companies, i. e., that it was made to be conservative and out of abundant caution to the end that no injustice might be done by respond-
294 ent in arriving at the value of the corporate franchise of plaintiff in this State and that it notes that the sum to which the reduction was made was less than 80% of what the Board believed was the fair cash value of Kentucky's proportion of plaintiff's entire capital stock."

It consequently appears that it would be injustice to impose upon complainant an assessment 20% higher than the defendants fixed as the fair cash value upon the assumption that the defendants found a sum 20% higher. The defendants declare that they made the reduction of 80% to the end that no injustice be done from which it results that injustice might be done if the 20% reduction were not made. In case 769, Illinois Central R. R. v. Bosworth, et al., one explanation of the reduction from the strict mileage proportion was the decreased earnings for the current year, which shows what injustice would result from attributing the reduction to equalization. That defendants did not treat the reduced sum $27,124,240 as an equalized sum further appears by the averment (p. 26),

"defendants say complainant is attempting by its bill to invoke the power of a court of equity to compel them to do an unlawful act, viz., assess its franchise and the franchises of all other corporations at less than their fair cash value, which action on the part of defendants would subject them to the pains and penalties of the law as aforesaid, and in addition thereto would work a forfeiture of their office."

This averment was made concerning the demand of complainant for equalization. It was, therefore, the $27,124,240 and not the $33,905,300, which was found to be the fair cash value.

295 As aforesaid, complainant was justly entitled to reduction from a 6% capitalization of two big years' earnings, for the so-called Kentucky earnings were an imaginary sum consisting of intrastate earnings computable, and a mileage proportion of interstate earnings not computable upon any basis, for the State (Sten. Rep. Evid., pp. 20, et seq.). A value, therefore, arising from capitalization of mileage proportion of interstate earnings involved, or included, values outside the State making necessary a deduction on account of excess values outside the State.

From the foregoing references to defendants' action it results that defendants reduced the sum reached by capitalizing two heavy years' earnings by 20%, they did not accord complainant equalization at 80%, or any amount, and adopted the sum reached by their own process as the fair cash value. They so avow in their answer, and they explain their action by the declaration that it was for the purpose of avoiding possible injustice to complainant. While, there-

fore, Mr. Tarbet, as recited by the court, obtained from Mr. Rich information of the process adopted, he may well have misunderstood the reason for the 20% reduction, seeing that the defendants have disavowed having made equalization, and have constantly asserted that the sum fixed was fixed as the fair cash value.

By Sec. 4081, Ky. Stat., defendants are positively commanded to fix the value of the total capital stock of the company and that in apportioning to Kentucky its proportion of such value that
296 proportion of the value of the capital stock which the length of the lines operated, owned, leased or controlled in Kentucky bears to the total length of the lines operated, owned, leased or controlled in Kentucky and elsewhere shall be considered. This statute has just been construed in the Louisville & Nashville case just decided. As appears by the affidavits of L. A. Harkness tendered herewith and by Poor's Manual of Railroads for the year 1911 at pages 404, 685, 809 and 821, the lines of the Yazoo and Mississippi Valley Railroad Company, the Indianapolis Southern Railroad Company and the Central of Georgia Railway Company were controlled by complainant, and the statute required them to be considered in the assessment, but they were not. Said affidavits of L. A. Harkness and the exhibits thereto attached show that by a stock and bond valuation the total capital stock of complainant, including the companies just mentioned, as of June 30, 1911, based upon average market quotation of stocks and funded debt was $377,365,811.00; that the system mileage (excluding complainant's mere running rights over the lines of other companies) was 7,862.95 and Kentucky mileage 560.49, or 7.13% excluding as aforesaid the mileage of other companies covered by mere running arrangements of complainant.

By said affidavits it further appears that on a net earnings basis the net income for the year ended June 30, 1911, available for interest, dividends, additions, betterments and other corporate purposes was $22,592,992.98, and that the total system mileage
297 operated owned, leased or controlled was 8,042.75 and Kentucky mileage 561.92 or 6.99%.

By comparing the value of a system mile, $47,993.00 with a Kentucky mile $33,056.00, it appears that a Kentucky mile is worth about 69% of a system mile, or that the excess value outside Kentucky is 31%. Kentucky's proportion on a mileage basis 6.99%, of the total net income aforesaid $22,592,992.98 is $1,579,240.21, which capitalized at 6% yields $26,320,670.15.

By said affidavit of Harkness the capital stock valuation of complainant for Kentucky on the stock and bond plan is $18,527,821.00, and this sum equalized at 60% yields $11,116,692.60, less than the valuation of the tangible property of complainant.

The excess value mile for mile of complainant's property outside the State, 31% deducted from the $26,320,670.15, strict mileage proportion for Kentucky of the total stock yields $18,161,262.40, which equalized at 60% yields $10,896,757.45, less than the assessed value of the tangible property; so it appears that by the inclusion in the assessment of complainant's capital stock of the stocks and bonds, when the valuation is computed on that system, and of the earnings when computed on the earnings system, of the Yazoo and Missis-

sippi Valley, the Indianapolis Southern and the Central of Georgia systems and their mileage there would be no sum whatever for assessment because Kentucky's proportion of the total capital stock would be less than the assessed value of the tangible property in Kentucky.

298 To end litigation, however, complainant is willing to accept 60% equalization of $27,124,240, yielding a franchise valuation of $3,897,161—less than the assessment upon which it has already paid, viz.: $6,618,585—but otherwise complainant respectfully asks that the assessment for 1912 be set aside and a new assessment for such year be ordered made according to the principles announced by this court in the opinions delivered in the eight cases now decided, in as much as it is recognized by the court that the assessment reached in this case was not arrived at "by the statutory method."

In view of another assessment complainant tenders herewith the affidavits of L. A. Harkness, Assistant to the Comptroller of complainant, showing assessments by the stock and bond method and by the net earnings method made up upon the extended mileage of complainant covered by the securities owned by complainant of the Indianapolis Southern R. R. Co., the Yazoo & Mississippi R. R. Co. and the Central of Georgia R'y Co., such mileage being controlled, through such securities, by complainant.

By these affidavits it appears that an assessment based upon consideration of the extended mileage would be even less than the assessment which this complainant has hereinbefore asserted its willingness to accept and an assessment based upon such mileage would be in strict accordance with this court's decisions in the other cases submitted with complainant's cases.

299 *Conclusion.*

Wherefore, we respectfully ask that the court either treat the $27,124,240.00 fixed by defendants as the valuation of complainant's franchise as the sum subject to equalization at 60%, or direct a new assessment in accordance with the principles announced by the court in the opinions in the eight cases just decided, the new assessment to be based upon the mileage of complainant operated, owned, leased or controlled, including that of the Yazoo & Mississippi Valley R. R. Co., Indianapolis Southern R'y Co. and Central of Georgia R'y Co.; and complainant will ever pray.

BLEWETT LEE,
TRABUE, DOOLAN & COX,
Counsel for Petitioner.

300 On the same day, on December 1, 1915, the following affidavit of L. A. Harkness was filed herein, to-wit:

301 STATE OF ILLINOIS,
County of Cook, ss:

Personally appeared before me, a Notary Public in and for said State and County, L. A. Harkness, to me personally known to be the Assistant to the Comptroller of the Illinois Central Railroad Company, who, being duly sworn, deposes and says:

That he resides at 6552 Kimbark Avenue, Chicago, Illinois; that he is the Assistant to the Comptroller of the Illinois Central Railroad Company; that by virtue of his office and authority he is familiar with the securities of the Illinois Central Railroad Company and its subsidiary lines; that he has informed himself as to the reproduction cost of the various portions of the said System operated by the Illinois Central Railroad Company, as shown by the records in the office of the Valuation Engineer of the said Company and as to the value of the stocks, bonds and other securities of the Illinois Central Railroad Company and its subsidiary lines; that the value as of June 30, 1911, of the capital stock and funded debt of the lines operated, owned, leased or controlled by the Illinois Central Railroad Company, excluding amounts held in the companies' treasuries and duplicated securities and including amounts in the hands of the public, as shown by the average market quotations during the year ending June 30, 1911, as set forth in exhibit on that subject attached to this affidavit, was the to*at*l sum Three Hundred Seventy-seven Million, Three Hundred Sixty-five T*jou*sand, Eight Hundred Ten Dollars ($377,365,810.00); that by dividing this sum by the total mileage of the lines operated,
302 owned, leased or controlled by the Illinois Central Railroad Company as of June 30, 1911 excluding mileage representing only running rights over the lines of other railroads not owned, leased or controlled by the Illinois Central Railroad Company, and not represented by stocks or bonds of the Illinois Central Railroad Company or its subsidiary or controlled companies, either in the hands of the public or otherwise, the to*at*l system mileage so determined being Seven Thousand, Eight Hundred Sixty-two and Ninety-five Hundredths (7,862.95) miles, he has determined the average stock and bond value of a mile of the lines operated, owned, leased or controlled by the Illinois Central Railroad Company, computed upon the basis of the stock and bond value of the entire system as aforesaid, to be Forty-seven Thousand, Nine Hundred and Ninety-three Dollars $47,993.00. Affiant further says that he has determined the stock and bond value of the lines operated, owned, leased or controlled by the Illinois Central Railroad Company in the State of Kentucky in the following manner: Whenever the expenditures of the sums derived from stocks and bonds is shown by the records of the Company to have been expended in the State of Kentucky, the stocks or bonds so represented have been allotted to the State of Kentucky, and whenever the stocks or bonds represent expenditures both within and without the State of Kentucky and cannot be, from the records of the Company, specifically allotted as having been expended within the State of Kentucky, affiant has allotted to the State of Kentucky such proportion of the total amount

of stock or bonds upon the property representing same as the reproduction cost of the said property in the State of Kentucky bears to the reproduction cost of the entire property represented by said stock or bonds, the valuation of stocks or bonds used being the
303 average market quotations as shown in the exhibit attached to this affidavit; that in so far as the stock or bonds do not specifically represent actual expenditures in the State of Kentucky affiant believes that the method adopted is as fair and reasonable one of allotting to the State of Kentucky its proper proportion of the values represented by the stock and bonds in the hands of the public of the Illinois Central Railroad Company and of its subsidiary lines, owned, leased or controlled by the Illinois Central Railroad Company; that as a net result of these calculations, affiant finds the total value upon the stock and bond basis of the lines of railroad operated, owned, leased or controlled by the Illinois Central Railroad Company in the State of Kentucky to be Eighteen Million, Five Hundred Twenty-seven Thousand, Eight Hundred Twenty-one ($18,527,821.00), and the average value computed upon a stock and bond basis of a mile of railroad of the lines operated, owned, leased or controlled by the Illinois Central Railroad Company in the State of Kentucky is Thirty-three Thousand, Naught Fifty-six ($33,056.00) Dollars; that affiant has attached hereto an exhibit, being a statement showing the value as of June 30, 1911, of the capital stock funded debt of the lines operated, owned, leased or controlled by the Illinois Central Railroad Company, excluding amounts held in companies' treasuries and duplicated securities and including amounts in the hands of the public, based on average market quotations during the year ended June 30, 1911, reported by the Commercial and Financial Chronicle, and in the absence of such quotations upon the best information obtainable in the State of Kentucky, as representing actual investments in Kentucky, or the proportionate share of Kentucky, upon the basis of the reproduction cost of the lines represented by securities covering property in the State of Kentucky.

Affiant also says that he has caused to be prepared a state-
304 ment showing the consolidated income account for the year ended June 30, 1911, of the lines operated, owned, leased or controlled by the Illinois Central Railroad Company, showing amount available for interest, dividends, additions and betterments, and other corporate purposes; dividends, interest and other corporate payments between the several companies comprising the Illinois Central System having been eliminated from the income accounts of the respective companies so as to show the income of the entire system as if it were operated as one company, and that, as shown by the records and accounts of the said lines, the net income available for interest, dividends, additions and betterments, and other corporate purposes, for the year ended June 30, 1911, was Twenty-two Million, Five Hundred Ninety-two Thousand Nine Hundred Ninety-two Dollars & Ninety-eight Cents $22,592,992.98; that the total mileage operated for the said year on the said system, including all the lines operated, owned, leased and controlled by the

Illinois Central Railroad Company was Eight Thousand, Naught Forty-two and Seventy-five Hundredths (8,042.75) miles; and that the mileage thereof in the State of Kentucky was Five Hundred Sixty-one and Ninety-two Hundredths (561.92) miles, amounting to Six and Ninety-nine Hundredths (6.99%) per cent of the said total mileage for the said system.

Affiant further says that each and every one of the said three exhibits so attached to this affidavit have been prepared under his direction by members of the Accounting Department of the Illinois Central Railroad Company from the books of account of the said company and its subsidiary lines, and have been examined by him, and that he believes them to be true, correct and accurate statements of the matter therein contained.

Affiant further says that on June 30, 1911, the Illinois Central Railroad Company was the owner of all of the capital stock, except directors' shares, of the Indianapolis Southern Railroad Company and was the owner of all of the capital stock, except directors'
305 shares, of the Central of Georgia Railway Company that the Illinois Central Railroad Company was the owner of all the capital stock, except directors' shares, of the Mississippi Valley Company, a corporation, which was the owner at the same time together with the Illinois Central Railroad Company of substantially all of the capital stock, except directors' shares, of The Yazoo & Mississippi Valley Railroad Company, so that the railroads of the Indianapolis Southern, The Yazoo & Mississippi Valley and Central of Georgia Railroad Companies, respectively, were owned or controlled by the Illinois Central Railroad Company within the meaning of the laws of Kentucky relating to revenue and taxation, as will more fully appear from the standard authority, Poor's Manual of Railroads for the year 1911, at pages 404, 685, 809, and 821, except that the words "Mississippi Valley Corporation" at page 685 should read "Mississippi Valley Company."

L. A. HARKNESS.

Sworn to and subscribed before me in Chicago, Cook County, Illinois, this 15th day of November, A. D. 1915.

I hereby certify under my official seal that I am authorized under the laws of the State of Illinois to administer oaths.

M. J. CONNELL,
Notary Public, Cook County, Illinois.

My Commission expires December 21, 1915.

306 On the same day, to-wit, December 1, 1915, the following Exhibit attached to the affidavit of L. A. Harkness was filed herein, to-wit:

(Here follows Tabular Statement, marked page 307.)

THIS PAGE BOUND VERTICAL IN BOOK

308 On the same day, to wit, on December 1, 1915, the following Exhibit attached to the affidavit of L. A. Harkness was filed herein, to-wit:

309 *Statement Showing Value, as of June 30, 1911, of the Capital Stock and Funded Debt of the Lines Operated, Owned, Leased or Controlled by the Illinois Central Railroad Company, Excluding Amounts Held in Companies' Treasuries and Duplicated Securities, and Including Amounts in the Hands of the Public, Based on the Average Market Quotations During the Year Ended June 30, 1911, Reported by the Commercial and Financial Chronicle, and in the Absence of Such Quotations Upon the Best Information Obtainable, in the State of Kentucky as Representing Actual Investments in Kentucky or Proportionate Share of Kentucky Upon the Basis of the Reproduction Cost of the Lines Represented by Securities Covering Property in the State of Kentucky.*

	Amount outstanding.		Assignable to Kentucky.			
Chicago, St. Louis & New Orleans R. R. Co.:	Par value.	Av. market quot.	Main line.	Cairo Bridge.	Louisv. Div.	Total.
Capital Stock	$9,989,800	$9,360,443				
5% Bonds of 1951	11,289,000	13,095,240	$2,117,892	.....	.....	$2,117,892
3½% Bonds of 1951	1,359,000	1,155,150				
Illinois Central R. R. Co.: Louisv. Div. & Terminal 3½% Bonds	21,788,000	18,650,528	.....	.....	14,286,750	14,286,750
Illinois Central R. R. Co.: Cairo Bridge 4% Bonds.	3,000,000	2,902,500	.....	2,123,179	.....	2,123,179
Total	$47,425,800	$45,163,861	$2,117,892	$2,123,179	$14,286,750	$18,527,821
Miles of Road in Kentucky						560.49
Amount per mile of road						33,056
Miles of Road—System						7,862.95
Percentage of Mileage in Kentucky						7.13

310 On the same day, to-wit, on December 1, 1915, the following Exhibit attached to the affidavit of L. A. Harkness was filed herein, to-wit:

311 *Consolidated Income Account for the Year Ended June 30, 1911, of the Lines Operated, Owned, Leased or Controlled by the Illinois Central Railroad Company, Showing Amount Available for Interest, Dividends, Additions, and Betterments, and Other Corporate Purposes. (Dividends, Interest, and Other Corporate Payments Between the Several Companies Comprising the Illinois Central System Have Been Eliminated from the Income Accounts of the Respective Companies, so as to Show the Income of the Entire System as if it were Operated as One Company.)*

	Illinois Central R. R. Co.	Indianapolis Southern R. R. Co.	Yazoo & Mississippi Valley R. R. Co.	Central of Georgia Ry. Co.	Total.
Railway Operating Income	$14,393,048.90	$160,517.66	$2,949,857.06	$3,405,426.19	$20,908,849.81
Other Income:					
Income from lease of road	3,084.09	.....	.....	43,500.00	46,584.09
Hire of equipment-credit balance	510,650.73	Dr. 43,305.41	Dr. 285,379.77	22,341.19	204,306.74
Joint facility rent income	1,128,703.02	9,694.78	18,608.62	38,101.13	1,195,107.55
Miscellaneous rent income	62.96	2,554.93	16,529.79	7,879.52	27,027.20
Dividend income	.....	.....	.....	421,390.25	421,390.25
Income from funded securities	57,390.00	.....	.....	80,950.00	138,340.00
Income from unfunded securities and accounts	438,171.29	3,307.08	1,706.31	.....	443,184.68
Miscellaneous income	139,135.97	15.00	50.00	154,711.48	293,912.45
Total Other Income	2,277,198.06	Dr. 27,733.62	Dr. 248,485.05	768,873.57	2,769,852.96
Gross Income	16,670,246.96	132,784.04	2,701,372.01	4,174,299.76	23,678,702.77
Deductions from Gross Income:					
Deductions for lease of other roads	12,039.70	.....	12,832.20	369,136.70	394,008.20
Joint facility rent deductions	493,277.02	27,100.12	1,191.83	76,503.16	598,072.13
Miscellaneous rent deductions	7,017.61	312.74	652.50	64,909.12	72,891.97
Miscellaneous deductions	7,682.43	.....	.....	13,055.06	20,737.49
Total Deductions	520,016.76	27,412.86	14,676.53	523,603.64	1,085,709.79
Net income available for interest, dividends, additions and betterments, and other corporate purposes	16,150,230.20	105,371.18	2,686,695.48	3,650,696.12	22,592,992.98
Mileage Operated—System	8,042.75 Miles.	Kentucky's proportion, 6.99 per cent.			
Mileage Operated—Kentucky	561.92 "				

312 On the same day, to-wit, on December 1, 1915, the following affidavit of Patrick S. Hanagan was filed herein, to-wit:

313 STATE OF ILLINOIS,
County of Cook, ss:

Personally appeared before me, a Notary Public in and for said State and County, Patrick S. Hannagan, to me personally known to be the Statistician of the Illinois Central Railroad Company, who, after being duly sworn, deposes and says:

That he resides at 1307 East 72nd Place, Chicago, Illinois; that he is the Statistician of the Illinois Central Railroad Company; that in the case of the Illinois Central Railroad Company vs. McChord, et al., Railroad Commission of Kentucky, No. 543, United States Circuit Court, Sixth Circuit, Eastern District, it became and was his duty to prepare from the official records of the Company accurate statistics showing what proportion of the receipts of the Illinois Central Railroad Company in the State of Kentucky was derived from Intrastate traffic and what proportion was derived from interstate traffic, intrastate traffic embracing the traffic moving from a point within the State of Kentucky to a point within the State of Kentucky, and interstate traffic embracing traffic moving from a point within the State of Kentucky to a point outside the State of Kentucky, or, from a point outside the State of Kentucky to a point within the State of Kentucky, or, passing from a point outside the State of Kentucky through the State of Kentucky to another point outside the State of Kentucky; that in the preparation of the said statistics in the case of the intrastate traffic the entire receipts were allotted to the State of Kentucky and that in the case of interstate traffic, as above defined, the basis of allotment to the State of Kentucky was the mileage *with* the respective shipments moved in the State of Kentucky, as compared with the total mileage moved; that as a result of the investigation at that time made for the purposes of the said suit, the relative proportions of intrastate receipts and interstate receipts were as follows:

314 Fiscal year ending June 30, 1905:

Intrastate	23.04%
Interstate	76.96%

Fiscal year ending June 30, 1906:

Intrastate	24.24%
Interstate	75.76%

Eight Months ending February 28, 1907:

Intrastate	24.88%
Interstate	75.12%

Average for the 2 years and 8 months:

Intrastate	23.95%
Interstate	76.05%

that he is familiar with the returns made to the Board of Valuation and Assessment of the State of Kentucky for the fiscal years ending June 30, 1911, 1912 and 1913; that in the statistics so furnished to the said Board the interstate receipts were computed with the same basis of mileage proportion as hereinabove set forth, and that the proportion of interstate receipts during thses years was, in the opinion of affiant, substantially the same as during the years 1905, 1906, and 1907.

PATRICK S. HANNAGAN.

Sworn to and subscribed before me in Chicago, Cook County, Illinois, this 13th day of September, A. D. 1915, and I hereby certify under my official seal that I am authorized under the laws of the State of Illinois to administer oaths.

M. J. O'CONNELL,
Notary Public, Cook County, Illinois.

My Commission expires December 21, 1915.

315 On the same day to-wit, on December 1, 1915, another affidavit of L. A. Harkness was filed herein which is as follows, to-wit:

316 STATE OF ILLINOIS,
County of Cook, ss:

Personally appeared before me, a Notary Public in and for said State and County, L. A. Harkness, to me personally known to be the Assistant to the Comptroller of the Illinois Central Railroad Company, who, being duly sworn, deposes and says:

That he resides at 6552 Kimbark Avenue, Chicago, Illinois; that he is the Assistant to the Comptroller of the Illinois Central Railroad Company; that by virtue of his office and authority he is familiar with the mileage operated June 30, 1911, of the lines operated, owned, leased or controlled by the Illinois Central Railroad Company, including trackage rights for the purposes of operation over the lines of other railroad companies; and that on June 30, 1911, the mileage so operated, owned, leased or controlled was as follows:

	Whole line.	Kentucky
Illinois Central Railroad Company.....	4,576.09	561.92
The Yazoo & Mississippi Valley Railroad Co.	1,371.98	.....
Indianapolis Southern Railroad Company..	179.26	.....
Central of Georgia Railway Company.....	1,915.42	.....
	8,042.75	561.92

and that the proportion of mileage in Kentucky to the whole system was 6.99 per cent.

Affiant further says that the mileage of the Illinois Central Sys-

tem operated June 30, 1911, of the lines operated, owned, leased or controlled by the Illinois Central Railroad Company, excluding trackage rights over the lines of other companies, was as follows:

	Whole line.	Kentucky.
Illinois Central Railroad Company.....	4,400.94	560.49
The Yazoo & Mississippi Valley Railroad Co.	1,371.01	.....
Indianapolis Southern Railroad Company..	179.06	.....
Central of Georgia Railway Company.....	1,911.94	.....
	7,862.95	560.49

317 and that the proportion of mileage in Kentucky to that of the whole system, excluding trackage rights, was 7.13 per cent.

L. A. HARKNESS.

Sworn to and subscribed before me in Chicago, Cook County, Illinois, this 24th day of November, A. D. 1915.

I hereby certify under my official seal that I am authorized under the laws of the State of Illinois to administer oaths.

P. S. HANNAGAN,
Notary Public, Cook County, Illinois.

My Commission expires March 14, 1919.

318 On December 31, 1915, the following order was made and entered herein, to-wit:

319 #731.

ILLINOIS CENTRAL RAILROAD COMPANY, Plaintiff,
vs.
H. M. BOSWORTH et al., Defendants.

This day came the plaintiff, by counsel, and tendered and offered to file a supplemental bill herein, and the Court being advised, it is ordered that the said bill be and it is filed;

Thereupon came the defendants, named in said supplemental bill, Robert L. Greene, Sherman Goodpaster, James P. Lewis, said Greene, Goodpaster and Lewis composing the Board of Valuation and Assessment of the State of Kentucky, Mills M. Logan, Charles H. Morris, O. S. Hogan, D. O. Myatt and Victor A. Bradley, by Mills M. Logan, Assistant Attorney General, and solicitor for himself and said other defendants, and entered their appearance herein; and, it is now by consent of all parties hereto ordered adjudged and decreed that the said defendant Robert L. Greene immediately upon his accession to the office of Auditor of Public Accounts for the Commonwealth of Kentucky, shall be substituted to the place and stead of his predecessor in office, the defendant Henry M. Bosworth; that the defendant Sherman Goodpaster, immediately upon his accession to

the office of Treasurer of said Commonwealth shall be substituted to the place and stead of his predecessor in said office, the defendant Thomas S. Rhea; that the defendant, James P. Lewis, immediately upon his accession to the office of Secretary of State of said Commonwealth shall be substituted to the place and stead of his predecessor in said office, the defendant Carl F. Crecelius; and that said defendants, Greene, Rhea and Crecelius shall then be substituted for their several predecessors aforesaid as members composing the Board of Valuation and Assessment of the Commonwealth of Kentucky; that the defendant, Mills M. Logan, immediately upon his ac-
320 cession to the office of Attorney General of said Commonwealth, shall be substituted in the place and stead of his predecessor in said office, the defendant James Garnett; and that the said Morris, Hogan and Myatt respectively be substituted to the place and stead of their predecessors respectively, Morris, Logan and Hoagn, and that said Victor A. Bradley be substituted to the place and stead of his predecessor; that all the allegations made by the plaintiff in this suit in its bill, with respect to the defendants Bosworth, Rhea and Crecelius, and with respect to them as members of the Board of Valuation and Assessment of the State of Kentucky, and all the allegations made as aforesaid with respect to said Garnett and his assistants, and with respect to said Bradley, shall in so far as they may be applicable be con-trued and treated — specifically made with respect to the defendants, Greene, Goodpaster and Lewis, and as to them as members of the Board of Valuation and Assessment aforesaid, and with respect to said Logan and His Assistants and said Bradley; that all answers made by the defendants, Bosworth, Rhea and Crecelius, and by them as members of the Board of Valuationa and Assessment and by said Garnett and the other defendants herein shall be construed and treated as made by the defendants Greene, Goodpaster and Lewis, and by them as members of the Board of Valuation and Assessment aforesaid, and by said Logan and the other defendants aforesaid to said supplemental bill; that all the evidence introduced in this suit during its pendency, as well as that introduced by the defendants as that introduced by the plaintiff shall be treated and considered as introduced for and against respectively the defendants Greene, Goodpaster, Lewis and Logan and the other defendants to said supplemental bill; that all orders heretofore entered in this suit shall be extended to and considered and held to embrace and apply to the said defendants Greene, Goodpaster and Lewis and the other defendants to said supplemental bill and
321 to their assistants and agents, now and after their induction into their respective offices, with the same force and effect as applied to their predecessors respectively during their incumbency of their offices, and with the same effect as if said orders were re-entered substituting the names of the defendants to the supplemental bill for the names of their predecessors respectively, and that this suit shall immediately upon their induction into office proceed against the said defefdants to the said supplemental bill, the said Greene as auditor aforesaid, the said Goodpaster as Treasurer aforesaid, the said Lewis as Secretary of State aforesaid, and said Greene,

Goodpaster and Lewis as constituting the said Board of Valuation and Assessment, and said Logan as Attorney General aforesaid and his assistants, and said Bradley as Commonwealth's Attorney aforesaid as fully as against their respective predecessors in office; and this order, being entered by consent, is entered without *the* notice or bond.

322 Said Supplemental Bill referred to in and filed by the foregoing order of December 31, 1915 is as follows, to-wit:

323 In the District Court of the United States for the Eastern District of Kentucky.

#731.

ILLINOIS CENTRAL RAILROAD COMPANY, Plaintiff,
vs.
HENRY M. BOSWORTH et al., Defendants.

Supplemental Bill in Equity, Bringing into This Suit the Following Additional Persons as Defendants.

Robert L. Greene, who has been elected Auditor of Public Accounts of the State of Kentucky;

Sherm*an* Goodpaster, who has been elected Treasurer of the State of Kentucky;

James P. Lewis, who has been elected Secretary of State of the State of Kentucky;

Mills M. Logan, who has been elected Attorney-General of the State of Kentucky;

—— ——, who is to be appointed Assistant Auditor of Public Accounts of the State of Kentucky;

Charles H. Morris, who is to be appointed First Assistant Attorney General of the State of Kentucky;

O. S. Hogan, who is to be appointed Second Assistant Attorney General of the State of Kentucky;

D. O. Myatt, who is to be appointed Third Assistant Attorney General of the State of Kentucky;

Victor A. Bradley, who has been re-elected Commonwealth's Attorney for the Franklin Circuit Court.

The Illinois Central Railroad Company, by way of Supplemental Bill, insisting upon all the allegations in its bill of comp*al*int herein, and its amended bills herein, now supplements the said bill as amended and further says:

That Robert L. Greene, Sherman Goodpaster and James P. Lewis were at the time of the filing of the bill of complaint herein, and now are, citizens of the State of Kentucky and residents and inhabitants in the Eastern District thereof; that Mills M. Logan, Charles H. Morris, O. S. Hogan, D. O. Myatt and Victor A Bradley were at the time of the filin*f* of the bill of complaint herein, and now are, citi-

zens of the State of Kentucky and residents and inhabitants of the Eastern District thereof;

And that —— ——, who is to be appointed Assistant Auditor of Public Accounts of the State of Kentucky, was at the time of the filing of the bill of complaint herein, and is now, a citizen of the State of Kentucky and a resident and inhabitant of the — District thereof; that the respective terms of office of Henry M. Bos-
324 worth, Thomas S. Rhea and Carl F. Crecelius as Auditor, Treasurer and Secretary of State and as constituting the Board of Valuation and Assessment of the State of Kentucky, as alleged in the original bill of complaint herein, and the terms of office of G. B. Likens, Assistant Auditor, James Garnett, Attorney General, Charles H. Morris, First Assistant Attorney General, Mills M. Logan, Second Assistant Attorney General, O. S. Hogan, Third Assistant Attorney General and Victor A. Bradley, Commonwealth's Attorney for the Franklin Circuit Court, will expire on the third day of January, A. D. 1916 when their successors respectively will succeed them in said offices;

That at the general Election held in the State of Kentucky on the 2nd day of November, A. D. 1915, the defendant Greene aforesaid was elected Auditor of Public Accounts of the State of Kentucky; the defendant Goodpaster was elected Treasurer of the State of Kentucky; the defendant Lewis aforesaid was elected Secretary of State of the State of Kentucky; the defendant Logan aforesaid was elected Attorney General of the State of Kentucky; and the defendant Bradley aforesaid was re-elected Commonwealth's Attorney for the Franklin Circuit Court, and that the terms of all these officers will begin on the third day of January, A. D. 1916 and that when inducted into office the said Greene, Goodpaster and Lewis will compose the State Board of Valuation and Assessment of the State of Kentucky; that the said Mills M. Logan will appoint as his First Assistant the said Charles H. Morris, as his Second Assistant the said O. S. Hogan, and as his Third Assistant the said D. O. Myatt, and that said Greene will appoint —— —— as Assistant Auditor of Public Accounts for the State of Kentucky.

That the said several persons above mentioned who have been elected and those who have been appointed and those who
325 will be appointed, as aforesaid, as suc-essors respectively to the defendants named in the bill of complaint herein and as stated in this supplemental Bill will under color of their official powers respectively, and each of them will, do and perform the several acts and things which the bill of complaint herein alleged were about to be done and performed by their predecessors in the office respectively; and that it is, therefore necessary that the same orders and temporary and final injunctions be entered as against the new defendants, made defendants by this Supplemental Bill as were made or prayed to be made against the defendants to said original bill.

That the aftoresaid Mills M. Logan, Charles H. Morris, O. S. Hogan and Victor A. Bradley are the same persons made defendants to the original bill of complaint herein, and that said Greene, Good-

paster, Lewis, Logan and Bradley elected to the respective offices above alleged have received their certificates of election and are ready and entitled to qualify as incumbents of said respective offices immediately upon the expiration of the terms of offices of their predecessors respectively on the 3rd day of January, A. D. 1916.

Wherefore plaintiff prays that the said several persons above enumerated in the caption be now made parties defendant hereto, and that they be substituted in this suit for their predecessors—upon the succession of the offices aforesaid; that this cause proceed in continuity against the new defendants aforesaid and such of the old defendants as will continue in office; that a temporary injunction be issued against each of the new defendants aforesaid to the same purport and effect as the injunction issued herein, and that meanwhile a temporary restraining order issue and remain in force pending the hearing and determination of the motion for a temporary injunction; that the plaintiff have all the relief against the new defendants made such by this supplemental bill as was prayed against the defendants to the original bill herein; that plaintiff have process
326 against the said new defendants in the same manner as the process was awarded against the original defendants requiring the said new defendants to answer herein, but not under oath; and generally that this cause proceed with the same force and effect against the new defendants as if they had been properly joined as defendants in the original bill of complaint herein; and plaintiff prays for all further and general relief and for its costs herein, incurred.

BLEWETT LEE,
TRABUE, DOOLAN & COX,
Attorneys for Plaintiff.

327 On March 13, 1916, the following order was made and entered herein, to-wit:

328 # 731.

ILLINOIS CENTRAL RAILROAD COMPANY
vs.
H. M. BOSWORTH et al.

This day came the complainant, by solicitors, and tendered and offered to file a second supplemental bill herein, and the court being advised, it is ordered that said bill be, and it is filed.

Then came the defendant named in said supplemental bill, T. M. Jones, by M. M. Logan, Attorney General, and solicitor for defendants, and entered his appearance herein, and it is now, by consent of all parties, hereto, ordered, adjudged and decreed that the said defendant, T. M. Jones, be substituted in place of his predecessor in office as Assistant Auditor of Public Accounts for the State of Kentucky, defendant, G. B. Likens, and that all parties brought into this cause by said Second Supplemental Bill and the supplemental bill herein filed December 31, 1915, whether as entirely new parties, or as old parties holding new offices, shall take herein the places ex-

actly of their respective predecessors in office and be respectively affected exactly as they were respectively affected by all pleadings, proof and orders herein, including the preliminary order of injunction and all other steps taken and proceedings had in this cause.

329 Said Secon- Supplemental Bill referred to in and filed by the foregoing order of March 13, 1916, is as follows, to-wit:

330 In the District Court of the United States, Eastern District of Kentucky. In Equity.

731.

ILLINOIS CENTRAL RAILROAD COMPANY, Complainant,
vs.
H. M. BOSWORTH et al., Defendants.

Second Supplemental Bill.

The complainant, Illinois Central Railroad Company, by way of a second supplemental bill, and insisting upon all the allegations in its bill of complaint and supplemental bill of complaint herein, now again supplements its said bill by the following allegations to-wit:

The defendant, Robert L. Greene, Sherman Goodpaster and James P. Lewis have qualified respectively as Auditor, Treasurer and Secretary of State of the Commonwealth of Kentucky, and have, since January 3, 1916, composed and now compose the State Board of Valuation and Assessment of the State of Kentucky, and said Greene has been since that date and is now ex officio the Chairman of said Board.

That Thomas M. Jones, who is a citizen of the State of Kentucky and a resident of the Eastern District thereof, has been appointed and qualified and is now acting as the Assistant Auditor of the State of Kentucky, and said Jones is now made a defendant herein.

That defendant M. M. Logan has qualified as Attorney General of the State of Kentucky, and has, since January 3, 1916, been acting and is acting as such.

That said M. M. Logan on January 3, 1916, appointed defendants Charles H. Morris, O. S. Hogan, and D. O. Myatt as, respectively, First, Second, and Third Assistant Attorneys General, who, since their appointment, have duly qualified and have continued to act and are now acting as such officers.

331 The defendant Victor A. Bradley qualified on the same day as Commonwealth's Attorney for the district wherein Franklin County is situate, under the new term for which he was elected and has since sontinued to act and is now acting as such.

The complainant reiterates all the allegations contained in its original and in its supplemental bill of complaint, and prays as is

prayed in each of said pleadings and for all further relief to which in equity the complainant may appear to be entitled.

BLEWETT LEE,
TRABUE, DOOLAN & COX,
Attorneys for Complainant.

332 On the day following to-wit, on June 28, 1916, the following orders were made and entered herein, to-wit:

333 #731.

ILLINOIS CENTRAL RAILROAD CO.
vs.
H. M. BOSWORTH et al.

This day came the plaintiff by its counsel Messrs. Trabue, Doolan & Cox and moved the Court to enter in conformity to its opinion delivered and filed herein August 31, 1916, a decree in the following words and figures to wit:

Final Decree.

ILLINOIS CENTRAL RAILROAD COMPANY, Complainant,
v.
HENRY M. BOSWORTH et al., Defendants.

At a Court held for the Court aforesaid on the 28th day of June, 1916:

Present: The Hon. A. M. J. Cochran, District Judge.

This cause coming on for hearing was argued by counsel, and the Court having on the 31 day of August, 1915, handed down an opinion indicating the conclusions reached by the Court, and complainant having tendered and filed a petition for rehearing or modification, and said petition for rehearing having been considered by the Court, said opinion and said petition are ordered to be filed and made part of the record, and upon consideration of the whole record, and including said petition, it appearing to the Court that the assessment herein was not made by or according to the statutory method prescribed therefor by the Commonwealth of Kentucky, it is ordered, adjudged, and decreed that the defendants, Robt. L. Green, Sherman Goodpaster, and James P. Lewis, the successors respectively of the original defendants in this suit, Henry M. Bosworth, Thomas
334 S. Rhea, and Carl F. Crecelius, individually and as constituting the Board of Valuation and Assessment of the Commonwealth of Kentucky, and the defendant, Robert. L. Green (successor of the defendant, Henry M. Bosworth), Auditor of Public Accounts of the State of Kentucky, and the defendant, Thomas M. Jones (successor of the original defendant, G. B. Likens), Assistant Auditor of Public Accounts of the State of Kentucky, and their successors in office respectively, hereafter elected and qualified, are hereby per-

petually enjoined and restrained from apportioning or attempting to apportion to any counties, cities, towns, or taxing districts in the State of Kentucky, any assessment of complainant's franchise for taxation for the year 1912; and the defendant, M. M. Logan (successor of the original defendant, James Garnett) and the defendants, Charles H. Morris, O. S. Hogan, D. O. Myatt, Victor A. Bradley and Wiley C. Marshall, whether acting individually or officially, are hereby respectively enjoined and restrained from instituting or prosecuting an action or proceeding, or prosecuting any indictment, warrant or other proceeding in Court, or at law, to coerce the payment by complainant of any taxes upon the assessment aforesaid, or any part thereof, whether on behalf of the Commonwealth or any county, city, town or taxing district;

And the said Robt. L. Greene, Auditor, and Thomas M. Jones, Assistant Auditor are perpetually enjoined and restrained from entering in account as a demand payable at the Treasury of the Commonwealth of Kentucky any amount of taxes based on any assessment of complainant's franchise for the year 1912, and from taking or causing any proceedings of any kind to be instituted
335 against complainant because of any failure or refusal to pay franchise taxes for said year 1912 based upon the assessment aforesaid; and each and all of the defendants, whether acting individually or assuming to act in their respective official capacities, are perpetually enjoined and restrained from instituting or prosecuting any proceeding or proceedings against the complainant, whether by indictment, civil action, or otherwise, to recover taxes or penalties, because of any alleged delinquency of complainant in its failure to pay taxes upon the assessment aforesaid;

And said assessment not having been made according to the statutory method prescribed by the Commonwealth, as is hereinbefore adjudged, it is ordered, adjudged, and decreed that a new assessment may, at the election of said defendants, be made by the defendants, Robert L. Greene, Sherman Goodpaster, and James P. Lewis, or their successors respectively in the offices of Auditor, Treasurer, and Secretary of State, and as constituting the Board of Valuation and Assessment of the State of Kentucky, — reported to this Court within thirty days from this date giving to plaintiff ample opportunity to be heard in advance of making said assessment, and that in making said assessment the said defendants ascertain and determine the excess value, if any, of the property of complainant outside the state of Kentucky, mile for mile, as compared with the property of the complainant inside the State of Kentucky, mile for mile, and deduct such excess value per mile upon the number of miles in Kentucky from the valuation of complainant's total capital stock apportioned to Kentucky so as to avoid taxing in Kentucky property having its situs in other states; also, the said defendants and their suc-
336 cessors in making said assessment ascertain and determine the value of the investments of complainant, and of its money, in its treasury at its home office which are not used in or connected with the operation of its railroad system, or the unit or property operated as a railroad system, if any such investment or money existed at the time, for consideration in making a franchise tax assess-

ment against complainant for taxes for the year 1912, and deduct the fair cash value of such investments or money from the fair valuation of complainant's entire capital stock; and that after apportioning to the State of Kentucky upon a mileage basis the residue of the fair cash value of said entire capital stock remaining after said deductions hereinbefore ordered, said defendants equalize the valuation apportioned in the manner hereinbefore indicated to the State of Kentucky with other property in said State of Kentucky at a ratio of 60 per cent assessed value of 100 per cent of actual fair cash value;

And this cause is now retained for the purpose of examining and passing upon the said assessment to be made as hereinbefore directed.

To the entry of which purposed decree as tendered the defendant by M. M. Logan, Attorney General, objects; and thereupon, the Court sustained said objection, and refused to enter said proposed decree tendered as aforesaid, to which ruling the plaintiff by its said counsel excepted.

Whereupon the court entered the following decree:

337 #731.

ILLINOIS CENTRAL RAILROAD COMPANY, Complainant,
v.
HENRY M. BOSWORTH et al., Defendants.

Final Decree.

At a Court held for the Court aforesaid on the 28th day of June, 1916;

Present: The Honorable A. M. J. Cochran, District Judge.

This cause coming on for hearing was argued by counsel, and the Court having on the 31 day of August, 1915, handed down an opinion indicating the conclusions reached by the Court, and complainant having tendered and filed a petition for rehearing or modification, and said petition having been considered by the Court, and response thereto having been delivered, said opinion, said petition, and said response are ordered to be filed and made part of the record, and thereupon and upon consideration of the whole record, including said petition, it is ordered, adjudged and decreed that the defendants, Robert L. Greene, Sherman Goodpaster, and James P. Lewis, the successors respectively of the original defendants in this suit, Henry M. Bosworth, Thomas S. Rhea, and Carl F. Crecelius, individually and as constituting the Board of Valuation and Assessment of the State of Kentucky, and the defendant, Robert L. Greene (successor of the defendant, Henry M. Bosworth), Auditor of Public Accounts of the State of Kentucky, and the defendant, Thomas M. Jones (successor of the original defendant, G. B. Likens), Assistant Auditor of Public Accounts of the State of Kentucky, and their successors in office respectively, hereafter elected and qualified, are

hereby perpetually enjoined and restrained from apportioning or attempting to apportion to any countes, cities, towns or taxing districts in the State of Kentucky any assessment of complainant's franchise for taxation in the State of Kentucky for the year 1912 in excess of the sum of One Million, Three Hundred Forty-seven Thousand, Two Hundred and Twelve Dollars ($1,347,212.00), it appearing to the Court that the complainant is not liable to any franchise tax assessment for said year in excess of the sum of One Million, Three Hundred Forty-seven Thousand, Two Hundred and Twelve Dollars ($1,347,212.00) in addition to the assessment upon which complainant has already made payment under the order of preliminary injunction in this suit to the state, counties,
338 cities, towns and taxing districts of the state, to wit: Six Million, Six Hundred Eighteen Thousand, Five Hundred and Eighty-five Dollars ($6,618,585.00), and the defendants, M. M. Logan (successor of the original defendant, James Garnett), and the defendants Charles H. Morris, O. S. Hogan, D. O. Myatt, Victor A. Bradley and Wiley C. Marshall; whether acting individually or officially, are hereby respectively enjoined and restrained from instituting or prosecuting an action or proceeding, or prosecuting any indictment, warrant, or other proceeding in Court, or at law to coerce the payment by complainant of any taxes upon any assessment, or any part thereof, or what purports to be, or to be a part of any assessment, whether on behalf of the Commonwealth or any county, city, town or taxing district, in excess of One Millian, Three Hundred Forty-seven Thousand, Two Hundred and Twelve Dollars ($1,347,212.00).

And the said Robert L. Greene, Auditor, and Thomas M. Jones, Assistant Auditor, are prepetually enjoined and restrained from entering in account as a demand payable at the Treasury of the Commonwealth of Kentucky any amount of taxes based on any assessment of complainant's franchise in excess of an assessment at the aforesaid sum of One Million, Three Hundred Forty-seven Thousand, Two Hundred and Twelve Dollars ($1,347,212.00) for the year 1912, and from causing or taking any proceedings of any kind to be instituted against complainant because of any failure or refusal to pay franchise taxes for said year 1912 based upon an assessment at a sum greater than the said sum of One Million, Three Hundred Forty-seven Thousand, Two Hundred and Twelve Dollars ($1,347,
339 212.00) and each and all of the defendants, whether acting individually or assuming to act in their respective official capacities, are perpetually enjoined and restrained from instituting or prosecutng any proceeding or proceedings against the complainant, whether by indictment, civil action, or otherwise, to recover taxes or penalties because of any alleged delinquency of complainant in its failure to pay taxes based upon any assessment in excess of said sum of One Million, Three Hundred Forty-seven Thousand, Two Hundred and Twelve Dollars ($1,347,212.00); and that complainant recover of the defendants its costs herein incurred to be taxed according to law.

And it is further considered, ordered, adjudged and decreed that

the preliminary order of injunction herein is continued and retained as to the aforesaid sum of One Million Three Hundred Forty-seven Thousand, Two Hundred and Twelve Dollars ($1,347,212.00), until twenty days after notice from the defendant, Robert L. Greene, Auditor aforesaid, to the complainant of the amount of taxes due the State, and notices from the proper officers of the amounts by said Greene, as Auditor aforesaid, certified to the proper officers of the counties, cities, towns and taxing districts, and the defendants hereinbefore mentioned are hereby enjoined and restrained with reference to said sum of One Million, Three Hundred Forty-seven Thousand, Two Hundred and Twelve Dollars ($1,347,212.00), as with reference to any sum in excess thereof until said complainant shall have had twenty days after the notices aforesaid of the amounts due as aforesaid within which to pay said sums so certified to complainant as aforesaid.

A. M. J. COCHRAN, *Judge.*

June 28, 1916.

340 *Order.*

731.

ILLINOIS CENTRAL RAILROAD COMPANY, Appellant,
vs.
ROBERT L. GREENE et al., Appellees.

This cause having been heard, and submitted to the Court, and the Court being advised, enters herein a decree which is this day spread at large upon the order book; and it appearing to the Court that the complainant would suffer irreparable damage and injury if the interlocutory injunction herein were not continued pending an appeal, and status quo maintained during the pendency of such appeal, it is accordingly ordered, adjudged, and decreed that the said interlocutory order of injunction be, and it is hereby, continued in force until the said appeal is heard and determined in the Supreme Court of the United States, or as that Court may otherwise order, and until the final order made after or pursuant to the judgment of said Supreme Court, the appellant having executed bond in the sum of Sixteen Thousand Eight Hundred and Forty ($16,840.00) Dollars, conditioned as is usual in cases of appeal for the payment of judgment and costs in the event said appeal be determined adversely to the said appellant.

341 # 731.

ILLINOIS CENTRAL RAILROAD COMPANY
vs.
HENRY M. BOSWORTH et al. and ROBERT L. GREEN et al., Their Successors.

This day came the complainant by Trabue, Doolan and Cox, its attorneys and filed herein and presented to the court its petition for

appeal and assignment of errors, intended to be urged by them, praying, also, that a transcript of the record and proceedings and papers upon which the decree herein was rendered, duly authenticated, be sent to the Supreme Court of the United States, and that such other and further proceedings may be had as may be proper in the premises.

On consideration whereof, the court does allow the appeal upon the plaintiff's giving bond according to law, in the sum of $16,840.00, which shall operate as a supersedeas bond.

Came the plaintiff by its attorneys, and presented to the court a bond on appeal herein, and the same is approved by the court and ordered filed and the appeal is allowed.

342 Said Petition for Appeal and Assignment of Errors are as follows, to-wit:

343 Filed June 28, 1916. J. W. Menzies, U. S. Clerk.

United States District Court, Sixth Circuit, Eastern District of Kentucky.

731.

ILLINOIS CENTRAL RAILROAD COMPANY, Appellant,
vs.
ROBERT L. GREENE et al., Appellee-.

Petition for Appeal.

The above named complainant conceiving itself aggrieved by the decree entered in this suit on the 28th day of June, A. D. 1916, doth hereby appeal from the said decree *of* the Supreme Court of the United States, and pray- that its appeal may be allowed; and that a transcript of the record and proceedings and papers upon which the said decree was made, duly authenticated, may be sent to the Supreme Court of the United States.

BLEWETT LEE,
EDMUND F. TRABUE,
JOHN C. DOOLAN &
ATILLA COX,
Counsel for Appellant.

Granted this June 28, 1916.

A. M. COCHRAN, *Judge.*

The assignment of errors above referred to are as follows:

Filed June 28, 1916. J. W. Menzies, U. S. Clerk.

United States District Court, Sixth Circuit, Eastern District of Kentucky.

ILLINOIS CENTRAL RAILROAD COMPANY, Appellant,
vs.
ROBERT L. GREENE et al., Appellees.

Assignment of Errors.

Appellant, Illinois Central Railroad Company, of Illinois, feeling itself aggrieved by the decree in the above entitled cause, comes by its counsel and assigns the errors thereto as follows, towit:

344

I.

The District Court erred in refusing to hold that the capital stock value of appellant did not exceed the value of the total tangible property of appellant, and that, therefore, there was no value assessable for franchise taxation.

II.

The District Court erred in holding that the Kentucky statute, properly construed, required an apportionment of the total stock value of appellant to Kentucky, and a deduction from Kentucky's proportion thereof of the value of tangible property of appellant in the State of Kentucky, instead of holding that the total tangible property of appellant in Kentucky and elsewhere should be first deducted from the total capital stock value of appellant before apportionment to the State of Kentucky.

III.

The District Court erred in requiring appellant to pay taxes upon a franchise valuation of Six Million, Six Hundred and Eighteen Thousand, Five Hundred and Eighty-five ($6,618,585.00) Dollars, or upon any other sum as a condition precedent to the Court's granting to appellant the preliminary or interlocutory injunction, and in declining to grant such injunction without such payment.

IV.

The District Court erred in holding that although the predecessors of defendants, in the assessment which they assumed to make, had not arrived at it by the statutory method, nevertheless the complainant was not entitled to a reassessment to be made according to the statutory method.

V.

The District Court erred in making equalization of the capital stock assessment of complainant (at 60 per cent) upon Thirty-three

Million, Nine Hundred and Five Thousand, Three Hundred ($33,905,300.00) Dollars as the fair cash value of the portion of complainant's unit in Kentucky, instead of upon the sum of Twenty-seven Million, One Hundred Twenty-four Thousand, Two
345 Hundred and Forty ($27,124,240.00) Dollars the latter sum being the amount which, as complainant claims, was found by the defendants' predecessors as the fair cash value of complainant's capital stock apportionable to Kentucky.

VI.

The District Court erred in holding that said Court had no power to review the action of the predecessors of defendants in capitalizing the earnings of complainant at 6 per cent instead of 7½ or 8 per cent, the latter rate being as contended for by complainant indispensable to a real criterion of value inasmuch as a steady income of 6 per cent could not be made without allowing 7½ or 8 per cent interest or income upon the value invested in railway property because of the cost of indispensable non-income producing expenditures for betterments, improvements, and other items equalling from 1½ to 2 per cent of the net income of complainant and of railroad companies generally.

VII.

The District Court erred in holding that it had no power to revise or correct, vacate or modify, the actions of the predecessors of defendants in arbitrarily selecting for capitalization the gross corporate income of complainant instead of complainant's net income; nor in arbitrarily selecting for capitalization complainant's income for some particular year or collection of years when the earnings of complainant happened to be especially high; nor in selecting for capitalization the so-called Kentucky earnings of complainant instead of the earnings of complainant's entire railway system which the statutes of Kentucky required said predecessors of defendants to consider; nor in arbitrarily valuing the bonds issued by complainant at par, when said bonds did not exceed in value more than four-fifths thereof; nor in taking the highest price brought upon the stock market by the capital stock of complainant instead of the average price.

VIII.

The District Court erred in holding that it had no power
346 to correct the mistakes made by said predecessors of the defendants, if their acts resulted from mistakes, in selecting for capitalization the wrong items as income; nor in fixing at par the value of bonds bearing such a rate of interest as showed them worth far less.

IX.

The District Court erred in holding that complainant's attack on the assessment, which predecessors of defendants assumed to make in this case, did not involve the charge of fraud, but only of the fundamentally wrong principle.

X.

The District Court erred in refusing to make any deduction from the franchise tax valuation which defendants assumed to make against complainant on account of the excess value mile for mile of complainant's railroad outside the State of Kentucky from such value mile for mile inside said State.

XI.

The District Court erred in refusing to deduct from said franchise tax valuation, which said defendants' predecessors assumed to make against plaintiff, anything on account of the excess value outside the State as compared with the value inside the State of complainant's railroad, because of the great value of complainant's terminals situated outside the State of Kentucky.

XII.

The District Court erred in holding that the assessment which the predecessors of defendants assumed to make against complainant was not assailable on the ground that the capital stock valuation which they assumed to make was apportioned to Kentucky upon the basis of the ratio of the length of lines operated, owned, and leased instead of the lines operated, owned, leased, or controlled, when the statute required such apportionment upon the ratio of the length of lines operated, owned, leased or controlled in Kentucky to such length in Kentucky and elsewhere.

347 XIII.

The District Court erred in refusing to apply a correction by way of deduction from the amount of the franchise assessment made by the predecessors of defendants against complainant on account of the value of securities held in the treasury of complainant in its home office outside the State of Kentucky, which securities, as complainant claimed, constituted no part of the railroad system or unit distributable among the states having franchise tax valuation laws.

XIV.

The District Court erred in holding that complainant was not denied the equal protection of the laws in being assessed by said predecessors of defendants by different method from that used in the case of other persons belonging to the same class and similarly situated.

XV.

The District Court erred in holding that the assessment which the predecessors of defendants assumed to make against complainant

was maintainable to the extent of One Million, Three Hundred Forty Seven Thousand, Two Hundred and Twelve ($1,347,212.00) Dollars, or any other sum in addition to the assessment upon which the complainant had already paid taxes, to-wit: Six Million, Six Hundred Eighteen Thousand, Five Hundred and Eighty-five ($6,618,585.00) Dollars.

XVI.

The District Court erred in not making equalization of the capital stock assessment of complainant which the said predecessors of defendants assumed to make at 52 per cent instead of 60 per cent.

BLEWETT LEE,
EDMUND F. TRABUE,
JOHN C. DOOLAN,
ATILLA COX,
Counsel for Appellant.

Filed this June 28, 1916.

A. M. J. COCHRAN, *Judge.*
J. W. MENZIES,
U. S. Clerk.

348 Said Bond is as follows, to-wit:

Filed June 28, 1916. J. W. Menzies, U. S. Clerk.

#731.

United States District Court, Sixth Circuit, Eastern District of Kentucky.

ILLINOIS CENTRAL RAILROAD COMPANY, Appellant,
v.
ROBERT L. GREENE et al., Appellees.

Bond.

Know all men by these presents:

That the Illinois Central Railroad Company, of Illinois, a corporation, is held and firmly bound unto the above named Robert L. Greene, Sherman Goodpaster, James P. Lewis, Thomas M. Jones, M. M. Logan, Charles H. Morris, O. S. Hogan, E. O. Myatt, Victor A. Bradley, and Wiley C. Marshall, in the sum of Sixteen Thousand, Eight Hundred and Forty ($16,840.00) Dollars. *Dollars,* to be paid to the obligee herein, to which payment well and truly to be made it binds itself, and its successors firmly by these presents.

Sealed with its seal and dated the 28th day of June, A. D. 1916.

[SEAL.] ILLINOIS CENTRAL RAILROAD COMPANY,
By EDMUND F. TRABUE, *Attorney.*

Whereas, the above named Illinois Central Railroad Company of Illinois has prosecuted an appeal to reverse the decree rendered on this the 28th day of June, 1916, by the United States District Court in the case of the said appellant against said appellees:

Now, therefore, the condition of this obligation is such that if the above named appellant, Illinois Central Railroad Company,
349 of Illinois, shall prosecute said appeal and shall answer all judgment costs that may be awarded against it if it fails to make its plea good, then the above obligation to be void; otherwise to remain in full force and virtue.

Sealed in the presence of us this the 28th day of June, A. D. 1916.

E. L. WORTHINGTON.
EDNA LEONARD.

Approved this 28th day of June, A. D. 1916.

A. M. J. COCHRAN,
Judge United States District Court,
Eastern District of Kentucky.

Filed June 28, 1916. J. W. Menzies, Clerk.

350 On the same day, to-wit, on June 28, 1916, the following order approving the Bill of Evidence was made and entered to-wit:

#731.

ILLINOIS CENTRAL RAILROAD COMPANY
vs.
H. M. BOSWORTH et al. and ROBT. L. GREENE*m* et al., Their Successors.

Came the complainant by Edmund F. Trabue its attorney came also the defendants by M. M. Logan, Attorney General for Kentucky, their attorney, and presented to the court a Bill of Evidence herein material to the issues involved in the Appeal and Cross Appeal sued out herein and the same is approved by the court and signed, sealed and made a part of the record herein.

Said Bill of Evidence is in words and figures as follows, to-wit:

No-. 731 & 769.

351 Filed June 28, 1916. J. W. Menzies, U. S. Clerk.

United States District Court, Eastern District of Kentucky.

ILLINOIS CENTRAL RAILROAD COMPANY, Appellant,
v.
HENRY M. BOSWORTH et al., Appellee-.

Stipulation.

For the purpose of abbreviating the record of the District Court for use on appeal to the Supreme Court, it is stipulated between the appellant and the appellees as follows:

The Clerk will copy the entire record of the District Court except,

1. Omit the blue print filed with the report of appellant to the Auditor of Public Accounts September 20, 1912, showing the details of mileage of appellant's railway in the several Counties and Taxing Districts of the State.

2. Make similar omission with reference to the report for the 1913 taxes.

3. Omit all but one copy of the restraining order.

4. Omit all letters acknowledging service of subpœnas.

5. Omit all parts of the public documents hereinafter specifically referred to, except such parts as are quoted in full in the bill of evidence.

6. Omit the testimony given in open Court by Daniel J. Brumley, Martin J. Blauvelt, and William L. Tarbet, and instead thereof copy the abbreviation in narrative form of such testimony as it is found in the bill of evidence.

7. Omit all the affidavits which are abbreviated or enumerated and described in the bill of evidence.

8. Together with the abbreviation of the evidence of Blauvelt and Tarbet copy the exhibits filed with their evidence respectively, being Martin P. Blauvelt, Nos. 1, 2, and 3, and William L.
352 Tarbet, Nos. 1, 2, 3 and 4.

9. Omit all of the affidavit of G. W. Lamb in Case No. 768 in this Court, styled Louisville & Nashville Railroad Company v. H. M. Bosworth, et al., read as the deposition of said Lamb pursuant to Item 5 of the stipulation filed May 4, 1914, except the statement qualifying him as an expert, and that part of said affidavit beginning on page 23 with the heading, "Comparison of Real Values and Assessed Values in the State of Kentucky," and ending on page 35 immediately before the heading, "Ascertainment of Value of Franchise of the Louisville & Nashville Railroad Company in Kentucky for Assessment for Taxation in 1913."

10. Omit all the cross-examination of G. W. Lamb except that part which is abbreviated and found in the bill of evidence.

11. Omit the affidavit referred to in the stipulation filed May 4,

1914, Item 5, as "Any one affidavit that may be filed by defendant controverting affidavit of G. W. Lamb filed in the L. & N. Cases for 1913," no such affidavit having been filed under permission of such item of such stipulation.

12. Omit all the Reports of complainant to stockholders for 1911 and 1912, being reports 61 and 62 covered by Item 11 of the Stipulation filed May 4, 1914, except

Income Account, p. 5,

Revenue Remarks, p. 6,

Two Paragraphs under "General Remarks," p. 11, one beginning "In the Spring months," and the other beginning "The several unlooked for occurrences above named."

Table 4, being condensed general balance sheet, pp. 18, 19.

Table 15, showing gross transportation revenues and miles of railway operated, p. 32.

Same matter from report 1912.

No part of Report 61 to be copied in case #769 and no part of Report 62 to be copied in case #731.

Bill of Evidence to be used in Cases #731 & #769 but only copied in transcript on appeal in Case 731, for authority for so doing see letter July 5, 1916, from Clerk Supreme Court to Compl't's Att'ys.

353 United States District Court, Eastern District of Kentucky.

No. 731.

ILLINOIS CENTRAL RAILROAD COMPANY, Appellant,
vs.
HENRY M. BOSWORTH et al., Appellees.

No. 769.

ILLINOIS CENTRAL RAILROAD COMPANY, Appellant,
vs.
HENRY M. BOSWORTH et al., Appellees.

Bill of Evidence in Suits in the Caption as Stipulated by the Parties to said Suits Through Their Respective Counsel.

Reproduction in Narrative Form, as Required by the Rules of Practice for the Courts of Equity for the United States, of the Evidence of Daniel J. Brumley, Martin P. Blauvelt, and William L. Tarbet.

354 On the trial in open court May 4, 1914 complainant introduced witnesses who testified as is hereinafter set out:

DANIEL J. BRUMLEY testified that he was Valuation Engineer of complainant and the Yazoo & Mississippi Valley Railroad Company, that he had been an engineer since 1895 continuously, that from 1895 to 1904 he served in various capacities with the Louis-

ville & Nashville Railroad Company to the position of Roadmaster, that from 1904 he had been in the service of Complainant as Division Engineer of Construction, as Principal Engineer in charge of Construction on the entire system, as Engineer of Construction, Engineer of Maintenance of Way, Assistant Chief Engineer, and finally Valuation Engineer; that his work in valuation covered the valuation of complainant's lines in Illinois, Iowa, Kentucky and approximately 600 miles of the Central of Georgia Railway; that he was a witness in the Alabama Rate Case.

He testified that the term "Valuation" as used in the affidavits filed in this case by engineers referred to the reproduction cost from which had been deducted an allowance for the depreciation of certain classes of structures; that an effort had been made to ascertain the reproduction value of complainant's property in Kentucky and elsewhere, that a part of the work was done by making investigations in the field, and part in the records of the Chief Engineer's Office, and a part of it a combination of both; that such methods were approved by the Profession.

That for the fiscal year ended June 30, 1911 the value so ascertained of complainant's lines in Kenutcky was $24,156,803.00 and for the fiscal year ended June 30, 1912 was $24,456,800; that the deduction for depreciation was 10%, to ascertain the present value.

That for the fiscal year ended June 30, 1911 the value per mile was $42,847, and for the year ended June 30, 1912 was $43,376.

That the entire railway system of complainant for the fiscal year ended June 30, 1911 had a value of $319,683,045, equivalent to $70,252 per mile; and for the fiscal year ended June 30, 1912, $324,790,000, or $71,394 per mile; that the same method
355 was pursued as to the entire system and as to the State of Kentucky.

Asked if the "Reproduction Value" of system mile was greater than that of a Kentucky mile, and for the ratio between them, he said, "that is the reproduction cost"; less depreciation and that of the Kentucky mile was 60.8% of that of the system mile. He said the reason for the difference was that the system embraced large railroad terminals such as those owned by complainant at Chicago, East St. Louis, Memphis, New Orleans and Louisville, and that they constitute a very large percentage of the entire value of complainant's property; that the reproduction value of the Louisville terminals, the only large terminals in Kentucky, was $3,622,400, of the Chicago terminals $120,660,000, of the East St. Louis terminal $3,400,000, of the Memphis terminal $8,315,000, of the New Orleans terminals $9,189,000. He said the reason for the heavy reproduction cost of the terminals was the great size of the tracts of land required at high unit values, and the construction of the terminals because of the separation of all grades in the city streets, taking care of public utilities, construction of passenger stations, engine terminals and shops, and the cost of constructing the roadbed in congested cities, which made the cost run to very large sums.

That he had compared the average value per mile of complainant's Kentucky road with its road outside Kentucky, and, not including

the value of the large terminals at Chicago, East St. Louis, Memphis, and New Orleans had found it to be about $38,000 per mile, and that if the value of the large terminals outside Kentucky were apportioned to the mileage outside Kentucky it would amount to $33,000; that eliminating and excluding the value of the Louisville terminal the value per mile in Kentucky would be $37,000, and the Louisville terminal would represent a value of $6,000 per mile; that excluding the terminals the value per mile outside would exceed the value per mile inside Kentucky approximately $1,000 per mile so that the excess in value of complainant's physical property outside over that inside Kentucky was, especially in the great terminals mentioned, and that the terminal values in Kentucky were small compared with those of the whole system, being only about 16% on a mileage basis.

356 That the expense of operating a mile of terminal based on the roadbed mile, compared with that of operating the track between terminals was very much greater because the terminals in large cities are usually quite congested; there are a great many miles of sidetrack to serve in cities as compared with outlying districts, so the traffic moves slowly; that there is more or less interference by the movements of many scheduled trains, making conditions not found in rural districts.

Mr. Brumley explained that he did not know the sale value but his testimony referred solely to the reproduction cost less depreciation; that the Louisville terminal had a value of $3,622,400 and those of Chicago, East St. Louis, Memphis and New Orleans of $141,556,000; that his comparison was of values of terminals inside with those outside Kentucky and not of values inside with the entire system including Kentucky; that complainant had no other large terminals than those mentioned June 30, 1912.

Cross-examined, Mr. Brumley said that complainant was the sole owner of the Chicago terminal, and that no other company owned an interest in the terminals mentioned; that the terminals mentioned would not have the values mentioned if disconnected from the railroad system; that it is rather doubtful if the Kentucky mileage would be as valuable if used without the terminals mentioned. Asked why then he did not apportion part of the value of the terminals to the Kentucky mileage, he answers because they are situated outside Kentucky and that it would have been improper so to apportion.

The Court remarks that the witness does not undertake to give salable value but only the cost to reproduce the property, to which counsel for defendants assent.

The witness says the terminals mentioned are used in connection with complainant's railroad and in the operation of its business.

The witness gives reproduction cost of that part in Kentucky of the Cairo Bridge between Illinois and Kentucky, in 1912, at $2,239,226; says that this amount was included in the reproduction cost of Kentucky lines theretofore given; that rolling stock
357 was not included but only roadbed and structures.

"Q. What do you mean, then, by 16%, Mr. Brumley, I understood you to say there was a relation of 16%, some way.

A. I made my comparison on the distribution of the Louisville terminal as against Kentucky mileage and the value of the terminals at Chicago, East St. Louis, Memphis and New Orleans against that of the Illinois Central mileage outside of the State of Kentucky.

Q. I see. Then it was a comparison of that inside with that outside, and not that inside with the system—the whole corporation of the railroad?

A. It was a comparison of the distribution of the Louisville terminal against each mile of the Kentucky lines with the value of the terminals at Chicago, East St. Louis, Memphis and New Orleans against each mile of the lines outside of the State of Kentucky."

358 On re-direct examination, the witness said that the reproduction cost of the terminals would be the same whether connected with complainant's lines in Kentucky or not if complainant owned the equivalent mileage which the terminals served; that the Memphis Terminal was created to take care of a certain volume of business, and that if the Kentucky business were not controlled by complainant such terminal might be less expensive, but if the same size as now the cost would be the same.

Martin P. Blauvelt, Comptroller of complainant and the Yazoo & Mississippi Valley Railroad, head of their Accounting Department, had been four years with those companies and twenty-three years previously with the Erie Railroad Company in various capacities, and previously two years with the La-kawanna Railroad.

Asked if the balance sheet was a criterion of value, said it was an index of the financial condition of a company; that for such purpose it was necessary to take both sides of the balance sheet; it was improper to take either asset or liability side because there were cross entries to be considered.

He explained that there was a debit entry to every credit entry and illustrated by reference to complainant's bond issues; that the balance sheet of complainant would not be a fair index of salable value.

The witness explained the terms "Kentucky Earnings" and "Kentucky Net Earnings" used in the reports made by complainant to the State of Kentucky as required by statute, saying that the local traffic in Kentucky was localized to the State; that the traffic originating between Louisville and Fulton destined to stations on the main line of the Chicago, St. Louis & New Orleans Railroad was divided on a straight mileage prorated with a minimum of twenty-five miles; that traffic originating outside Kentucky on the main line of that railroad destined to points on the main line of the Kentucky Division between Louisville and Fulton was prorated on a straight mileage with a minimum of twenty-five miles; that traffic originating on Louisville Division branches destined to points beyond Fulton on a straight mileage prorated with a minimum of fifty miles to branch lines; that traffic originating on foreign

359 lines billed through on interline bills was first apportioned to complainant's system and then re-divided, prorated to Kentucky on the basis just stated; that traffic originating in Ken-

tucky and billed through on interline waybills to foreign roads was similarly treated; and traffic moving between points south and north of the Ohio River was divided on established divisions and the amount accruing south of the River to the Chicago, St. Louis & New Orleans Railroad aforesaid was treated on the basis above stated.

That all passenger business was localized, and the passenger business was mostly from passenger train traffic and apportioned on the mileage prorate; that the mail revenue was apportioned to Kentucky on a mileage prorate of the roads crossing the state line, and the express on composite traffic of freight, passenger and mail and the road mileage; that all other items were localized in the State, making nearly all a mileage prorate with arbitraries for minimums, for branch lines, and minimums for a short haul less than twenty-five miles.

He testified that one mile was treated like another in divisions of expenses without considering the excessive expense in operating a terminal mile; that the prorating was therefore not exactly correct; that neither the expenses nor earnings are entirely accurate and it is impossible to get them so, no plan having yet been devised to accomplish it. He said you could estimate the actual earnings of the system as a whole; that inasmuch as the terminals in Kentucky were less valuable than those outside, the method of allowing nothing distinctively for the expense of terminal service would work to the advantage of Kentucky in dividing earnings on a mileage basis.

Referring to complainant's reports to the State Auditor for the years ended June 30, 1911 and June 30, 1912, he said it was not proper to capitalize "The Gross Corporate Income" because it included incomes from securities which was not income from railroad operation. He said that the corporate income for capitalization for the year ended June 30, 1911, was properly $15,698,182.12 which was reached by adding to the "Operating Income, $14,393,048.90"
shown in the report the amounts "accruing as a railroad
360 proposition" amounting to $1,836,853.25 composed of hire of equipment, rent of joint facilities received by complainant for the use by others of its facilities and real estate, rents from property not used in operation, from which is deducted $531,720.03 largely the rent paid by complainant to other companies for the use of their facilities used jointly with complainant; that the proper income for capitalization for the year ended June 30, 1912 was the operating income, $7,812,718.60 with items added aggregating $1,361,568.25 less deductions of items aggregating $757,478.20 yielding corporate income for capitalization on the same method as previous year $8,416,808.65. He said he, personally, did not make the calculations aforesaid.

The witness said that earnings, in order to ascertain the cash value of the property should be capitalized at 8% because the Interstate Commerce Commission required accounts stated in specified ways; that a railroad company could raise money in only two ways, first by earning it, and secondly by selling bonds, and that the cost

of a betterment could not be charged under the Commission's rules, to operating expenses, but that the companies were required to charge many expenditures to additions and betterments which neither increased revenues nor decreased operating expenses; that a test made for a period of about three years of such unproductive items showed that they amounted to about 2% on the company's capitalization, being some years less and other years more; that if bonds were issued to cover such items the fixed charges would become very high and probably result in reducing dividends to stockholders to a very low point; that a margin over a straight return on investment to cover such unproductive expenditures was necessary.

The Court asked if such expenditures would be included in operating expenses except for the Commission's rules and the witness answered that many of them always were, but said he was not criticising the Commission's rules, but that railroad companies in prosperous times put much expenditures of such kind into operating expenses.

Asked for an illustration, the witness answered that in one year the Erie Railroad included in maintenance of equipment the
361 repairs and renewals of freight cars equalling the cost of 2000 new cars; that the company as far as possible paid for the elimination of all grade crossings and of other similar charges out of the allowance for maintenance of way, and the betterment of equipment such as the strengthening of wooden cars with steel underframes; and that the improvements spread over a period had the effect to prolong the life of the equipment and that such expenditures then called operating expenses were now to be charged to additions and betterments, all increases of the value of the road being now so charged.

The witness said that the rule was proper in order to ascertain accurately the income but that the return to the company should be larger in order to cover the increased cost. He illustrated by invoking the cost of eliminating grade crossings seldom affecting gross revenue or operating expenses although very expensive, mentioning a Chicago crossing costing over a million dollars.

He said that often a fine depot was but a monument or advertisement without increasing revenue; and that the 8% net earnings *was* necessary to insure a 6% dividend so that 8% and not 6% was the rate for capitalization.

He said that for the year ending June 30, 1911, complainant had $50,559,000 book value, of securities not pledged, and book accounts including miscellaneous balances for collection and a number of small items that were not of a local character and which were at its home office in Chicago. He enumerated Central of Georgia Railway stock $3,474,249.02 and Yazoo & Mississippi Valley Railroad bonds aggregating over $6,000,000; bonds called the "Insurance Fund" of over $2,000,000, and $250,000.00 in the Pension Fund; $1,388,000 Tennessee Central Bonds, and the indebtedness of companies to which complainant had made advances but whose operations were not included in complainant's. He explained "advances"

to be money lent and accounts collectable. He further enumerated Indianapolis Southern mortgage bonds $8,777,000, and declared the total $50,559,000 without mentioning all items. He included cash in bank outside Kentucky amounting to $15,022,416.00.

362 For the year ended June 30, 1912, similar aggregate was $46,836,866.89, and the Indianapolis Southern bonds owned previous year had been sold or exchanged, and Central of Georgia Railway bonds acquired. The witness said there was another method of ascertaining the cash value of a running railroad, viz., the stock and bonds method, and that the valuation by such method of complainant's system, i. e., value of the stock including the debenture stock, was $156,135,301, and all the system bonds including the bonded debt of the Chicago, St. Louis & New Orleans Railroad (not carried on complainant's books), and of the Dubuque & Sioux City Railroad (not carried on complainant's books) excluding the bonds secured by the pledge of collateral (not Illinois Central system securities), was $140,114,218, making a total of $296,249,519 for both stock and bonds; that the highest and lowest quotation for each month were taken from the Financial and Commercial Chronicle, so far as they quoted securities, and that such values were applied to Illinois Central Bonds not quoted in this country, bearing similar rate of interest and secured by similar lien.

The witness said that the result so obtained would include all the Company's property, and in order to ascertain the property for apportionment to the States for taxation, it would be necessary to deduct its local intangible property aforesaid, $50,559,000, and $46,836,866.89.

The witness declared that there was not infrequently much fluctuation in earnings so that the use of a single year's earnings for capitalization to determine cash value was not an accurate method, or a sure criterion, illustrating that the year ended June 30, 1911 was one of complainant's best, and the next year one of its poor years, and that five years' average would be fair.

The witness explained that the market quotations invoked would not obtain if the entire capital stock were sold at once; that such sale would reduce the value considerably, that a sale of 1500 shares of complainant's stock in one day affected the market quotations 4 or 5 per cent; that a sale of the entire stock would reduce the price.

363 Cross examined the witness said that 1912 was a very poor year for complainant because operating expenses were high, primarily because of a strike, and the flood in the Spring of 1912 interrupted railway operations and increased their cost.

That the $50,559,000 intangible property aforesaid was assets invested in securities, amounts due complainant from other companies, cash in bank outside Kentucky.

Responsive to the Judge's question the witness said that complainant did not distribute the said sum as dividends because, e. g., the securities were more valuable prospectively than at present.

(By the Court:) "But do they help the Company in any way to earn more money?"

(By the Witness:) "No, unless you consider the income from the securities, that is all."

Asked for what purpose the $15,000,000 in bank was kept, the witness answered that the amount was at that time very large, because it included proceeds of sale of bonds which proceeds were later used for another purpose.

He thought part of it was invested in Central of Georgia Railway bonds; that a great deal of it came from sale of Illinois Central bonds. Asked if any of it was consumed in operating expenses, witness answers, "it is impossible to trace cash." Asked by the Judge how much cash complainant ordinarily kept to meet running expenses, said that its cash was high in 1911, a prosperous year, and equipment purchases and heavy betterment expenditures contemplated, but that ordinarily its cash showed about $3,000,000 to $4,000,000 balance, not a large sum, in view of necessity for betterments and equipment.

Asked by the Judge if the $15,000,000 was used in operating expenses, or for railroad purposes, he said some of it might possibly have been, but the Company could not identify the cash. Further asked if any of it was used for expenses connected with the railroad business, said, "Well, we probably used some of this to purchase
Central of Georgia income bonds; I couldn't tell you. Al-
364 though I know a large amount was used for the purpose of
equipment, i. e., new equipment, on the side of betterments."

(By the Court:) "I am trying to get at whether it was just the cash that had accum*m*ulated in the hands of the Company."

(Answer.) "No it was more than ordinary."

(The Court:) "Accum*m*ulated to purchase bonds."

(The Court:) "Does your Company have an accum*m*ulated surplus?"

(Answer:) "Yes we have a profit and loss balance."

(The Court:) "How much surplus did you have on June 30, 1911?"

(Answer.) "In 1911 it was $6,783,964.69."

(Question.) "How much on June 30, 1912?"

(Ans.) "$2,768,366.57."

(Q.) "Then, if you only had that much surplus, how could you have $50,000,000.00 to devote to outside use?"

(Ans.) "You could have almost any amount, because that had no reference to your surplus under the old system of accounts. You could buy properties—which you could see from the Illinois Central reports they did, any quantity of it—and charge it to operating income, and it never did go into the proper account, or the surplus. It came out of that other."

Asked the market value June 30, 1911, of the Central of Georgia Railway stock, book value of approximately $3,500,000.00, witness answers that there was none on the market, but that it was worth what complainant paid for it; asked its income June 30, 1911, answers that it had none; that it paid no dividends, but was the entire stock of that Company.

Asked the market value of the $6,000,000.00 Yazoo & Mississippi

Valley bonds, June 30, 1911, answers that none of them was on the market; that their income was 4 per cent.

Asked the value of the Tennessee Central bonds answers, carried at par, $1,338,000.00, and that they were not on the market but bore 4 per cent.

Concerning loans to other companies, said the latter were
364½ controlled by complainant, but not included in the system proper; that some were in the shape of securities, etc.; that the complainant controlled the companies through stock ownership; that there were no Indianapolis Southern gold bonds on the market June 30, 1911, but that they, $8,777,279.86, were worth the same at which they were carried because they could be issued, under complainant's mortgage provision, for acquirement of the property. Witness did not know how the bonds were acquired, but thought from proceeds of bond sales. The witness said that now a railroad company could procure money only by earning it or selling bonds, but formerly by appropriating earnings for equipments, betterments, etc.

"Q. I believe you said there were only two ways that a railroad company could procure money?

A. Yes, sir; to earn it, or to sell bonds. I am talking about the present when I state that. I was not talking about what had been prior to 1907. You can see from the Illinois Central Company's reports prior to that date, if you will examine them, that practically every year there were millions appropriated from income for the purchase of equipment, and for the purchase of property at different times. Now, that time has all gone; you can't do that. If it is appropriated that way now, it must be shown as a part of what we call now 'appropriated surplus.' The Illinois Central spent millions in that way, that are not enumerated in the balance-sheet in any way.

Q. Where did the Illinois Central get these millions that it spent in that way?

A. It got it from earnings.

Q. After all, then, it goes back to the question of earnings?

A. Yes, sir."

Witness states the net corporate income of complainant for year ended June 30, 1911, to be $11,315,343.92, all available for dividends except $164,847.23 used for additions and betterments. That a difference existed between net corporate income and the net operating income; that the operating income was really operating revenue less operating expenses and accruing taxes, and was $14,393,049.90; that the gross corporate income was $21,135,487.40. Witness said that it was not proper to capitalize gross corporate income in order to get the total value of the system, but all the items which formed a part of the 'other income,' which did not pertain to the railroad as a railroad proposition, or any other similar item should be deducted, thus capitalizing an amount which included everything derived from the railroad as an operating property, deducting items which it paid in order to earn its gross income. The witness indicated amounts to be deducted for the year ended June

30, 1911, from the gross corporate income before capitalizing, reciting interest and dividends on securities owned, and enumerated from Table 5, p. 20 of the Annual Report for 1911, including Dubuque & Sioux City Railroad income $234,524.00 received by complainant through stock ownership, complainant operating the railroad, and crediting receipts against advancements, operated and reported as part of complainant's system, also $73,500 on com-
365 plainant's Louisville Division and Terminal Bonds, complainant owning capital stock and operating trains over the Division as a part of its system, being a part of the $26,000,000.00 Illinois Central Louisville Division Bonds acquired as consideration for property conveyed.

The witness said that the $46,585.00 interest from purchased line bonds was similar in principle to the Louisville Division, and that the item, $1,120,000.00, interest from Illinois Central Interim Certificates were first lien equipment certificates, and shown on both sides of the balance sheet, but never issued, and never used except on one occasion pledged as collateral by complainant on loans to it, but not pledged June 30, 1911; that the $41,500 interest on Cedar Rapids & Chicago Railroad bonds was similar to that of Louisville Division Bonds, the road owned and operated by complainant; that the item, $155,000.00, interest from Cherokee & Dakota Railroad Bonds was in similar condition, and that the same was true of item $150,000.00 interest on Bridge Bonds of the Chicago, St. Louis & New Orleans Railroad Company, the bridge a part of complainant's system; that the item, $102,441.62, derived from bonds of the Indianapolis Southern Railroad was where complainant owned all the stock, but the road was operated independently, the last named roads not being so operated; that the item, $673,280.00 was interest from bonds of Louisville, New Orleans & Texas Railroad operated independently, and that complainant actually received the money into its treasury; that same was true of the $102,441.62 received from Indianapolis Southern Railroad, but not true of the $150,000.00 received from Chicago, St. Louis & New Orleans Railroad, that being a cross-entry, complainant paying the money to itself; that the Interim Certificates were not identical because the $150,000.00 constituted securities of another Company, while the Illinois Central Interim Certificates were its own securities, but that complainant paid the money as rent and received it as interest on the securities; that the $267,300.00 interest was paid and received in the same way; similarly the $155,000.00 from the Cherokee & Dakota was paid and received; that the last mentioned was
366 a part of the Yazoo & Mississippi Valley, and likewise the item of $1,070,350.77 interest on bonds of the Louisville, New Orleans & Texas Railroad; that complainant did not own nor control the Tennessee Central, as aforesaid; that the $140,000.00 received from the Yazoo & Mississippi Valley was spent by the complainant for railroad purposes in some way or other, witness did not know; that the items to be deducted as aforesaid from the gross corporate income before capitalizing aggregated $4,290,825.59; that the witness was capitalizing the operations of the entire system;

that rents paid for use of roads or interest on bonds of companies controlled by complainant were eliminated.

Witness said the balance sheet herein intended to reflect the present cash value of complainant's property; that in his valuation he had included securities not reflected in the balance sheet; that the balance sheet showed others which merely covered pledged collateral; that the balance sheet did not show market value; that it showed par value of capitalization of complainant, but not the par value of certain securities of the Chicago, St. Louis & New Orleans Railroad nor of the Dubuque & Sioux City Railroad, which it was necessary to include in determining the cash value of complainant as an operating system, and the system from which the earnings capitalized were derived; that no sort of valuation could be reached from the balance sheet, and witness explains why; that complainant's books would not show the value of anything it had; that immediately after inventory a commercial concern's books might so show; that complainant's report to the Inter-state Commerce Commission does not and was not intended to show it; that such value was not even shown in the private records in complainant's office; that it is necessary to arrive at it by different methods of calculation; that the Engineering Department has available figures and has made complicated calculations as to "the reproduction value", but that such is not the present cash value; that the Assessing Board could not reach the valuation from the balance sheet, and witness doubted whether
367 or not they could from the reports to the Auditor.

The court observed: "No, they have the salable value of the stocks and bonds, and the income, by which to capitalize."

The witness said that complainant operated the Chicago St. Louis & New Orleans Railroad, the line which runs through Kentucky, under a lease for a term of 400 years for a rent for the year ended June 30, 1911, of $2,447,619.70; that the rent was paid largely to bond-holders; that by Table 2 in complainant's annual report to the stockholders for the year ended June 30, 1911, p. 16, revenue from transportation and from other operations appeared and constituted the revenue of complainant's entire system, including the Dubuque & Sioux City and the Chicago, St. Louis & New Orleans railroads, such being entire revenue of the lines capitalized in the stock and bonds collection, i. e., the gross, following that is the operating expenses, the entire operating expenses of the whole system—the Illinois Central, the Dubuque & Sioux City, and Chicago, St. Louis & New Orleans Railroads. The result following is the net operating revenue. That, also, is the net result of the operations—not including the outside operations—of that entire system. The items to be mentioned as outside operations are the operation of dining-cars, restaurants, elevators, and other similar operations, which the Interstate Commerce Commission classifies as "other than transportation" operations. The following items, taxes accrued, is the entire taxes of the Illinois Central, including the Dubuque & Sioux City and the Chicago, St. Louis & New Orleans. "I then arrive at this figure we started off with, the operating income, which is the result of the operation of the entire Illinois Central system,

including the Dubuque & Sioux City, and the Chicago, St. Louis & New Orleans Railroads.

He says that the item, "other income," $6,742,438.56, which he eliminates, includes the hire of equipment, all of the other rents—joint facilities—"other rents" being the amount complainant receives from companies for the use of facilities jointly used on the Illinois Central, the Dubuque & Sioux City, and the Chicago,
368 St. Louis & New Orleans railroads; that the interest on securities and other interest mentioned is altogether miscellaneous interest from different accounts—some on the bank balances, and interest from any source other than from actual securities, and includes the entire system; that miscellaneous income is largely rent of real estate not used in the operations of the railroad, sums received from cultivation permits, and everything of such description that is received from such matters on the entire system.

Witness said that he had not made any deduction on account of deductions from corporate income, but had practically capitalized that total figure, corporate income, deducting only $524,702.42, the amount paid by complainant to companies other than the Dubuque & Sioux City, and the Chicago, St. Louis & New Orleans Railroad Companies, where complainant uses another railroad company's tracks jointly with it on some rent basis, in which case complainant would pay any balance in any year to that company in lieu of any other item. He said he had not deducted the large item of rents accrued for lease of other roads; that it included the Dubuque & Sioux City and the Chicago, St. Louis & New Orleans rent, and that complainant owning some of the Chicago, St. Louis & New Orleans securities, paid, as a matter of fact, that interest on these securities under the item of rents accruing for lease of other roads. He said that he had ignored that item, and the fact that complainant received interest on the securities embodied in the item of $4,290,825.59. He said that such item should not be deducted, but should not be added. He said that the item, $4,290,825.59 went into complainant's treasury as an asset, but was not revenue from railroad operations; that part of it was interest on bonds held by complainant in the Dubuque & Sioux City, and Chicago St. Louis & New Orleans Railroads, but that the total earnings of those railroads had already been capitalized; that he had capitalized every single bit of income from operation of the entire system. Indeed, had capitalized the total result; that he had capitalized everything received for the use of complainant's fa-
369 cilities, hire of equipment, everything earned by its equipment, rent received from the use of railroad property, e. g. of a house on the right-of-way, or the like, cultivation permits, or miscellaneous earnings of railroad property, and had deducted only "other rents", joint facilities which is just the opposite of the other item, being the amount the Illinois Central pays to other companies for the use of their facilities. The other roads own and operate them, but the Illinois Central has the use of them under "trackage arrangements". The witness said that for the year ended June 30, 1911 there was set apart for additions and betterments only $164,-

847.23, but that such sum did not represent the monies previously referred to as the 2 per cent necessary for additions and betterments unproductive of revenue. Responsive to inquiry he said that since 1907, eliminating equipment bonds $30,000,000.00, which were never in the hands of the public, complainant's bonded debt had increased over $55,000,000.00, in 1909 $20,000,000.00 over 1908; in 1911 $6,360,000.00 over 1910, and in 1913 $22,000,000.00 over 1912, and that the total at close of the year, including Dubuque & Sioux City and the Chicago, St. Louis & New Orleans Railroads was $216,860,000.00 worth June 30, 1912—not including the Gold 4's of 1953, a collateral bond secured altogether by lien on the Yazoo & Mississippi Valley Railroad as well as by pledge of the Yazoo & Mississippi Valley Railroad securities, $141,347,481.00. Asked the value of the bonds not included, the witness thought that in March, 1913, when considered, they were worth over $23,000,000.00. Asked why they were not added to the $141,347,481.00, he said, it was because they were collateral bonds secured by collateral of another company, and if included as a part of complainant's bonded debt, it would be necessary to deduct from the capital stock calculation securities pledged as collateral for that issue of bonds, so that the result would be the same, indeed the fairest way being to omit the bonds because not worth as much as the collateral.

370 Responsive to the questions, witness, referring to Report of June 30, 1908, for illustration explained the term, "other indebtedness", but immaterial here. Asked as to bonded indebtedness $187,000,000.00 shown by Report June 30, 1911, said the figure was correct, but had "offsetting items", but Report to Auditor may not have shown the items as it was not supposed the balance sheet would be used for valuation purposes.

Redirect examination:

Witness files Exhibit, Blauvelt No. 1, being a statement showing value of capital stock and funded debt of complainant, excluding amount held in its treasury as of June 30, 1912, based upon the highest market quotations and average market quotations during the year ended June 30, 1912, as reported by Commercial and Financial Chronicle; also Exhibit Blauvelt No. 2, being similar statement as of June 30, 1911; also Exhibit Blauvelt No. 3, being statement showing the operating income, gross operating income, and net income from operation of the entire line of the Illinois Central Railroad for each of the fiscal years ending June 30, 1908, to June 30, 1912, both dates inclusive.

Witness said complainant had a lease of the Dubuque & Sioux City Railroad; that the latter included all the lines West of the Mississippi River operated by complainant; that complainant owned nearly all the capital stock of that Company. He said, as to the lines South of the Ohio River, that they were now all owned by the Chicago, St. Louis & New Orleans Railroad Company, but were not so owned in the years referred to, and that complainant owned nearly all the stock of the Chicago, St. Louis & New Orleans Company, so that, roughly speaking, the ownership of the roads West of the Mis-

sissippi River was in the Dubuque & Sioux City Railroad Company, and the lines South of the Ohio River in the Chicago, St. Louis & New Orleans Railroad Company, and those roads were leased to and operated by complainant; that the valuation which he had made upon the earnings basis would have been exactly the same if complainant had owned the lines which were leased to it; and that the same was true of the valuation on the stock and bonds plan,
371 that he took the securities of the lessor companies and figured them and treated them as he would have done Illinois Central securities. Explaining the "treasury securities", being securities in complainant's treasury, he said that in keeping his accounts straight he had treated them as if interest had been in fact paid on them, simply as an accounting scheme, and not as representing a real increase of income; that the accounts were not so handled at present, but were then so handled in accordance with the Inter-state Commerce Commission's rulings at that time. He explained that his reference to raising loans from sale of bonds should have included all securities as well as bonds.

Witness says he thinks Central of Georgia bonds were acquired within last year of period mentioned, amounting to $12,000,000.00 or $13,000,000.00; that during such period complainant advanced large sums to the Yazoo & Mississippi Valley Railroad Company for new construction, all represented in the bonds mentioned; that without a very careful study he could not ascertain where all the large sums of money went, and even with study could probably not account for it all, but within a few million dollars.

Recross-examination:

That he knows of no two years where discrepancy in earnings was so great as between 1911 and 1912, they being abnormal years.

William E. Tarbet, Land and Tax Commissioner of complainant, and the Yazoo & Mississippi Valley Railroad Company, for three year, previously Tax Commissioner for sixteen years; Consulting Engineer of the Railroad and Warehouse Commission of Illinois from 1897 to 1898, and for previous five years Assistant Engineer of complainant.

Referred to testimony of Mr. Blauvelt and Mr. Brumley, said that he, witness, had followed three methods of determining the value of capital stock of complainant, or Kentucky's proportion thereof, and first the net earnings method; that he had not made computations by the earnings of a single year, because the value of capital stock could not be so determined, that the net earnings fluctuated to a much greater degree than the value of the stock or the property as a whole; that consequently an average of five years was neces-
372 sary, and the system net earnings for years ending June 30, 1907,-8,-9,-10 and -11 averaged $14,382,992.00 which he had capitalized at 8 percent and found a value of $179,787,400.00, which apportioned to Kentucky on mileage basis, 12.3 percent, manifested the capital stock value for Kentucky of $22,113,850.00. He said that from Mr. Brumley's testimony he found that the average Ken-

tucky mile, on the reproduction theory, was worth in round figures, 61 percent—not that it was worth it, but that it would cost to reproduce it only 61 percent of what it would cost to reproduce the system mile—for the reason given by Mr. Brumley; wherefore an excess of physical value outside of Kentucky appeared, which it was necessary to consider in apportioning the system capital stock value to Kentucky. He said that such result was because the net earnings, the basis of the computation, were made possible only by the reason of the excess cost to reproduce, or excess investment in physical property outside Kentucky. Computing the 61 percent he found for Kentucky $13,489,449.00, and such sum equalized at 60 percent he found to produce $8,093,669.00, less than the Railroad Commission's valuation of complainant's tangible property in Kentucky.

Witness said that had he used 7 percent capitalization, the capital stock valuation would have been $9,249,908; 6 percent, it would have been $10,791,559.00; that such capitalization produced the value of both tangible and intangible property; so that the Commission's valuation would exceed the proper franchise valuation. For illustration the witness introduced the sheet showing his calculations filed as Exhibit Tarbet—No. 1, detailing the calculation for 1913 valuation covering results for fiscal year ended June 30, 1912, by the same net earnings method, witness showed valuation on 8 percent capitalization $7,178,870.00, at 7 percent $8,204,423.00, and at 6 percent $9,571,826.00, all less than the valuation of the tangible property. Complainant introduced the single sheet statement from which witness testified, and filed as Exhibit Tarbet—No. 2.

Witness detailed his valuation on stock and bonds plan taking Mr. Blauvelt's figures, at average quotations, of all stocks and bonds outstanding, not in complainant's treasury, and excluding in-
373 vestments in the securities of the Louisville, New Orleans & Texas Railroad Company, showing the valuation at $296,241,519.00 from which he deducted the cost or book-value of the stocks and bonds, cash, notes, advances, and miscellaneous properties not used for railroad purposes—i. e., in the operation of complainant's system—located outside the State, having their situs outside, $50,559,000.00 leaving balance, $245,690,519.00; Kentucky's proportion thereof being 12.3, $30,219,934.00. He found by allowing for excess value, or taking 61 percent, the value to be $18,434,160.00 and by equalizing such sum the equalized value to be $11,060,496.00, more than a million dollars less than the assessed value of the tangible property, such tangible property assessment being $12,381,773.00. Complainant then introduced typewritten statement showing results of stock and bonds plan for year ended June 30, 1911, as Exhibit Tarbet—No. 3.

Witness said that the choses in action in the nature of stocks, bonds, cash, notes, advances, debts, and the like, were deducted because they consisted solely of a class of property taxable only at the home of the owner; that he allowed for the excess value mentioned because the stock and bonds method included tangible as well as intangible property.

Witness then gave a valuation fixed by the market value at average quotation of all stocks and bonds outstanding not in complain-

ant's treasury, and including investments and securities of the Louisville, New Orleans & Texas Railway Company aforesaid, showing valuation of $299,058,719.00; from which he deducted the securities taxable only outside Kentucky aggregating $46,836,867.00, leaving a balance of $252,221,852.00 which apportioned to Kentucky on mileage basis, 12.3 percent, gave Kentucky 31,023,288.00; but allowing for excess value, as aforesaid, outside Kentucky, 61 percent, yielded $18,924,206.00, which equalized at 6 percent gave $11,354,524.00, a little more than a million dollars less than the Railroad Commission's tangible property assessment, $12,478,903.00. Complainant introduced the memo. on stock and bonds plan for year ended June 30, 1912, filed as Exhibit Tarbet—No. 4.

374 On the "errors or mistakes" in the methods stated in defendants' answers, the witness indicated that defendants appeared to have capitalized $2,403,028.00, gross corporate income from Kentucky, the item for Kentucky corresponding to the similar item for the system discussed by Mr. Blauvelt. He said that such item was not a proper item to capitalize. He said that in using the stock and bonds plan the defendants did not state exactly what figures they used, but jumped at $300,000,000.00, even figures for 1912 assessment; and in 1913 assessment failed to allow any excess value outside Kentucky, and made no allowance for stocks, bonds, debts, etc., situated in Illinois; and did not allow any equalization, declaring that they were not bound to equalize, but rather to observe the letter of the statute and assess at 100 percent; that the Board capitalized at 6 percent, the figure too small as explained by Mr. Blauvelt.

On capitalizing a single year's earnings the witness said that no one would for a minute think that the assets of the Company were worth only 50 percent in 1912 of their value in 1911, which would be true if a single year's earnings were capitalized; also, said that many corporations have valuable physical property and no earnings, and therefore could not be valued by capitalizing earnings; that value did not run up and down from year to year with earnings.

The witness said that through the assistance of gentlemen in the office of the Auditor and of the State Board of Equalization he had obtained the equalized aggregate assessment of all taxable property in Kentucky for years ended December 31, 1910—or 1911—showing—

Lands assessed	$351,555,618.00
being 33.92 percent of the total assessment for the State;	
Lots	286,524,845.00
being 27.65 percent of such total assessment for the State;	
Personalty not equalized—he thought such as cash and things that have a fixed value	83,468,030.00
being 8.05 percent of the whole;	

375 Personalty equalized—having no fixed value $124,905,527.00

being 12.05 percent of the whole;

Railroads 109,938,195.00

being 10.61 percent of the whole;

Franchises of miscellaneous corporations (other than railroads) 17,975,958.00

or 1.74 percent of the whole;

Banks and trust companies..... 32,805,202.00

or 3.17 percent of the whole;

Distilled spirits 29,146,142.00

or 2.81 percent of the whole.

That the aggregate assessment in the State was shown to be $1,036,319,517.00.

Witness emphasizes that the total bank assessment was only 3.17 percent of the total.

Witness said his recollection was that the error resulting from capitalizing the wrong figure as to earnings, and also in not taking the average value during the year of the stocks and bonds, for the 1912 assessment was about $10,000,000.00; and also said that as to the 1913 assessment the over-estimate on account of not using the average price was $18,466,521.00, and that the error from capitalizing the gross corporate income amounted to $68,491,888.00; that in the 1912 assessment from not using average price of stocks and bonds was $10,684,581.00, and that the result of the work in capitalizing the gross corporate income was $72,659,700.00.

Witness said that in making the 1913 assessment the Board ignored the current year's earnings, being only about one half that of the previous year, a wholly unfair and unwarranted omission, as he considered it; that the year omitted was the worst ever.

On cross-examination Mr. Tarbet said that the excess value outside the State was 61 percent.

He said that he was the same representative who appeared before the Board of Valuation and Assessment for the years 1911
376 and 1912, and submitted certain calculations for the Board to consider, and fixed what he considered a fair cash value in more ways than one; that on such occasions he did not fix the value as low as $13,000,000.00, or $16,000,000.00 or $18,000,000.00, or at any sum less than $27,000,000.00; that he did not remember assisting in preparation of a bill in the first case, No. 731, but may have been called on to furnish assistance. Asked if he furnished statistics as to value of stocks and bonds of complainant for year ended June 30, 1911, incorporated in the bill, answered that he guessed he furnished nothing that went into the bill, but might have furnished something to the Board on the spur of the moment when he had to file a quick objection to their work; that he remembered two particular appearances before the Board about May 8th, 1911, or earlier,

when he had conference with the individual members of the Board and with the Board itself, and prepared a blue print presented May 10, 1911, the blue print prepared at Frankfort, at the Hotel at night, blue printed and by an architect next morning; that when it was prepared he had not considered several features of assessment that ought to have been considered; that in his calculations he fixed the value ranging about $28,000,000.00, but had not considered the 61 percent excess value outside Kentucky aforesaid, and the elimination of that personal property which should, according to the laws of all states, be assessed only at the home office; that he had included in one of his four methods of assessment for the year 1913 the reproduction method, the item of excess value, because he could see clearly its application, but did not until afterward see its application to any other method of valuation, which he now saw.

In answer to cross-question, "But in that calculation you did take into consideration the excess values outside of Kentucky, in arriving at the value of the property in Kentucky as $20,563,537.00", he answered:

"I don't remember, but I guess you are reading it right."

(Counsel was reading from exhibits in bill 769.)

377 Asked if he had not, in his calculations before the Board fixed the value of the intangible property at $55,874,756.00 and deducted it from the total capital stock to be apportioned to Kentucky, answered:

"Oh, no; that is a different matter entirely. That $55,000,000.00 I deducted from the system value of capital stock found by the stock-and-bonds method, and it simply covered—or I intended to represent by it—the amounts of investment that the company had in properties that were not in any way connected with the railroad operated. It had nothing to do with this personal property, because it would be property assessed by Illinois and the city of Chicago. That did not occur to me at the time; and it is another amount, anyhow."

He said that it was after submitting the calculations referred to by Counsel to the Board in 1913 that he reached the conclusion that the property of complainant in Kentucky was not worth the amount shown in the statement which he submitted to the Board, and with the Court's permission explained that he visited Frankfort in May 1912, not anticipating any such increase as was made; that theretofore, generally, arguments based solely on the most obvious facts were sufficient to convince the Board of an error of such magnitude without going into facts a little more obscure; that previously it had seemed sufficient in arguing with the Board to base argument only on the most obvious facts, e. g., that such a sum capitalized would yield such a sum; and then everybody knew that property was not assessed at over 60 percent, and that he did not then dream of the necessity of departing from the figure called "operating income," and adding something out of other income, or subtracting something from something else to obtain a more exact figure; that the variation was not so much in those years anyhow; that neither had it occurred to him that there were any excess values outside Kentucky

to be considered in apportioning the system value because of the cost of reproduction; that it then seemed to him that the system value, found by capitalizing the net earnings, should be pro-rated straight to Kentucky, without any consideration of the excess outside; that all of those things had been thought of since—they had been brought to his attention.

Witness said that he showed the Board in 1913 that the actual cost of reproduction of the system, including the rolling
378 stock, was $363,975,545.00; that he thought $4,500,000.00 or $4,250,000.00 was apportionable to Kentucky as the value of rolling stock, and $24,000,000.00 the reproduction cost, after deducting depreciation, of the road in Kentucky, making something over $28,000,000.00; he said

"But, of course, Judge, the more you think about it, the more clearly you will see that the cost of reproduction has nothing whatever to do with the value—no relation to it whatever; that it has nothing to do with the value for taxation, or any other purpose."

Q. "That is one of the ways recognized for determining the value of a system by the Interstate Commerce Commission, is it not?"

Ans. "Not for taxation, no. It may be for rate-making." Asked what the difference was, he answered:

"The basis you would take for your value for rate-making purposes is the money you put into it; but when you try to get a value for taxation, you consider the money you get out of it."

The Court: "That is the distinction."

Q. "That is the distinction. But at the same time, the actual money invested in the property is represented by what it would cost to reproduce it, less depreciation, is it not?"

Witness answered "no," that the right-of-way of some railroads costs thousands of dollars, while its taxation value would not be $100.00, that such was the difference between the actual value of the investment and the cost to reproduce—that the latter might be 50 times as much. Asked if the Illinois Central system was not worth more than it would cost to reproduce it, he answered:

"No, I wouldn't say that Judge."

Asked if it was not worth as much, he answered.

"I say there is no relation. It may be worth more, and it may be worth less. You have to place the value on it in altogether a different way."

Q. "And the only way recognized by you for taxing the line is to capitalize the net income, or take the stock and bonds plan?"

Ans. "I think those are the best for a railroad that is in good shape financially, and from a traffic standpoint."

The Court: "Do I understand in this cost of reproduction that the right-of-way is put in at cost now to get it?"

Witness: "Yes sir."

379 The Court: "That is in these figures."

The Witness: "Yes sir."

The Court: "The right-of-way is put in at what it would now cost to get it?"

The Witness: "Oh, no; not what it cost, but on the basis of the value of the adjacent—based on the price of the adjacent property."

The Court: "The value of the adjacent land?"

The Witness: "Yes, sir; the commercial value of the adjacent land."

The Court: "And therefore it gets the appreciation that the general land gets?"

The Witness: "Yes."

Asked by Counsel:

Q. "Now, Mr. Tarbet, you have attempted to demonstrate that the cost to reproduce a road does not show its value for taxing purposes. Then, if it does not, why do you persist in saying that it is the correct way of finding the excess value out of this State."

Ans. "Well, the excess value in this sense: You know, ought to pro-rate—theoretically, I think you should pro-rate the earnings and expenses, too, where the investment is. Do you get me?

Q. "Yes, I understand."

Ans. "You invest your money in a very expensive terminal for instance, with only one object, and that is to make money for the company; and you buy your right-of-way and make all of your investments for the same one purpose of making money. Now, how do you make money? Out of the gross income as compared with your expenses of operation. It seems to me, theoretically, that the true way to apportion, to allocate, both gross and net earnings, is on the basis of your investment. In other words, if you have got twice the investment in Kentucky that you have in Tennessee, you ought to consider your gross earnings and expenses, and your net earnings as well."

The witness said that every mile in the system did not contribute something towards the earnings of every other mile, but some were "deadletters"; that complainant had branches that meant simply an awful loss of business for fifteen years, as long as complainant had them. Asked if a mile costing $50,000.00 to complete, and another $20,000.00, would not be equally valuable for earning, witness answered that it might or might not be; that the extra cost might be, because of rougher country, and also for that reason the business might be less. Asked if more valuation should be apportioned to the rough country because it must be traversed, declined to say so, but said that his theory advanced might be erroneous. He said he did not know whether one mile earned as much as another, and did not think anyone knew, and explained that a train-load of bananas from New Orleans might be hauled from New Orleans to Chicago, and the train loaded with green stuff on return, and passed 42 miles through Kentucky, and "so much" was apportioned to Kentucky, and that witness did not know whether this was right or wrong.

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Asked if he still thought it proper to determine excess value on the basis of cost of reproduction, answered:

"Yes, I think that is right; because you have got your investment, you know. If you didn't have your terminal in New Orleans and

this great terminal in Chicago, you couldn't do the business—you couldn't handle it."

Asked if it would be fair to use the reproduction cost only to get excess value when it did not apply at all for assessment purposes, witness answered that he did not have in mind for rate-making purposes the cost of reproduction of a particular section of railroad, e. g., the section in Kentucky, but the cost of the system, the railroad as a unit; that the application could not be made to a little piece of road, but that his idea was that if the railroad cost $300,000,000.00, that same would be invested, and be a basis for rate-making; and if it earned $18,000,000.00 a year—the average year—that would be the proper basis for taxation; but as to excess value—the prime thing with a big railroad system wanting business, is terminals, and they "cost like smoke"; that good terminals in a big system will cost a third of the entire cost; wherefore, when the system covering thirteen states had a terminal in one out of comparison with the large terminals elsewhere, the excess cost of investment, called what one might, was outside the state.

Asked "That excess value does add value to the road in the State, does it not?"

Ans. "Why, to some extent, possibly, yes. But that leads you to a theory of ironing-out values, that they tried in Wisconsin once, where they tried to make every mile in a whole system of 6,000 miles of equal value. You know that is ridiculous and absurd."

381 Asked if the excess value must not be distributed over the system, he answered:

"Yes, but you can't measure it. You don't know how much your long-haul mileage, a thousand miles straight-away, how much that adds to the value of your $200,000,000.00 terminals; and you don't know how much value your expensive terminals add to that thousand miles straight-away."

Q. "Then it would appear to be a very difficult thing to arrive at the value of an interstate railroad in any particular state, would it not?"

Ans. "The hardest thing in the world. And I understand the accounting Association have given up similar problems. And one of the reasons is the position taken by the State authorities. They all want the big end of it; each State wants the big end of it.

Q. "But none of them get it, do they?"

Ans. "All of them."

On re-direct examination witness said that he had never heard of computing the excess value of an Inter-state road outside the State until the decision of Judge Cochran in the instant case; and that when he made to the Board his proposed methods of assessment, the U. S. Census statistics had not come to his knowledge substantiating his contention as to equalization; nor had the report of the Special Tax Commission of Kentucky, the Davis Commission. Asked if before submitting his methods involving capitalization at 6 per cent he had discussed with the Board capitalization at 7 or 8 percent, answered:

"Oh, repeatedly; yes, sir. Not only the Kentucky Board, but half a dozen other boards."

He said the Kentucky Board had always refused to capitalize at other than 6 per cent, although he had always insisted that at least 8 per cent was warranted by railroad operations; that he employed 6 per cent because he knew the Board would consider nothing else. Witness said that in ascertaining the excess value several variations in method might be employed; e. g., you could base it on terminals.

As to the deductions previously mentioned the witness said that it had not occurred to him to consider the excess value in question except in apportioning the valuation by the cost of reproduction method, but that he had concluded that it was equally appli-
382 cable to any other method, because earnings could not be obtained without terminals, the tangible as well as the intangible property being included in any valuation of the capital stock. The witness explained that the value of the non-operative property, about $55,000,000.00, was not deductible from the value found by capitalizing the gross corporate earnings, but only from a value which included operated and non-operated properties in the first place; so, a value based on earnings did not include the value of non-operated property as would the stocks and bonds method.

Concerning the valuation mentioned in the amended bill in Siler v. Illinois Central, filed by defendants in evidence, witness said that the valuation as he recollected was about $28,000.00, which was in excess of the reproduction value stated by Mr. Brumley; that the amended bill in the Siler Case showed a value based on a statement by Mr. Baldwin, complainant's chief engineer, of about $28,000,000.00, but $2,000,000.00 for rolling stock, and over $4,000,000.00 for franchise value were included, the deduction of which would leave $22,000,000.00.

"Q. The Attorney General put to you the case of the building of a railroad down to Fulton, the first part of it through a smooth section of the country and the second part through a rough country, and asked you about whether each mile would be taxed just the same. I want to vary that case—that case of having it through a smooth and rough country, both, in Kentucky: Suppose it was smooth all the way to Fulton and rough all the way from Fulton to Memphis, so that in building the road from Fulton to Memphis it would cost just twice as much as from here to Fulton, although the distances supposed to be the same. Suppose, now, that Kentucky attempts to tax the road on the idea that it is entitled to taxes on the value of that railroad, and that Tennessee is not entitled to tax it any more than Kentucky, even though the road in Tennessee cost twice as much as in Kentucky; do you think Kentucky would be right in that contention? Do you think Tennessee would be entitled to have a larger taxable value than Kentucky,—in the case I have put?

A. Well, just the two stretches of railroad, taken independently, I would say, as I did before, that the reproduction cost, the original cost, would not have anything to do with the basis of taxation, in my opinion.

Q. When you are getting at the excess value, are you getting anything more than the ratio?

A. That is all.

Q. And when you are useing the reproduction value, applied to a corporation having an excess value, you are simply trying to get the ratio to apply? You are not trying to determine the actual values outside and inside?

A. No, sir; you don't take the figures of the reproduction cost as a measure of the value at all, but take simply as a basis from which to derive the ratio.

The Court: You compare the value of the terminals in Kentucky with the value of the terminals outside?

The Witness: Yes, sir.

Q. Now, Mr. Tarbet, these terminals in the other States, that have been described increase the earnings allotted to Kentucky, do they not?

A. Why, yes; and not only would I say that, but I would say that the terminals are indispensable to these earnings. I don't
383 think you could have any such earnings, unless you had these terminals to take care of your shipments.

Q. And you stated to the Attorney General that the terminals outside did add value in Kentucky?

A. They do. But I would contend at the same time—or repeat it—that you can't say that a million dollars invested here will add as much value to a hundred million invested there, and vice-versa. So I think that a hundred million there don't add just the same that a million would here."

384 The testimony of JOHN E. GARNER, read by complainant under stipulation, is as follows:

That his home is in Clark County, Kentucky; that he was once Chairman of the State Board of Equalization, from 1908 to 1911 inclusive, and during his service on the Board was fairly familiar with the values of property in Kentucky and with the relation of actual values to assessed values thereof, and that in his judgment—merely an opinion—the ratio of assessed was from 40 to 50% of real value, with reference to all classes of real estate, whether town lots or lands. That some personal-y—for example, money—was assessed at actual value; that it would be difficult to determine as to tangible personal property, that it was more a matter of escaping taxes than paying taxes.

Asked concerning thoroughbred stock, gave an instance, perhaps because extraordinary, in Fayette County, where an entire lot of thoroughbred animals was assessed at $57,000.00, and witnesses showed that four such animals in that County had, within that year, brought more than twice such amount; that there were 135 or 140 animals in the lot, and there were 3,100 in the County, which were assessed at about $208,000.00, in round numbers; that he thinks 2 or 3 of them brought $125,000.00, and were afterwards resold in the same year for $140,000.00.

Concerning the standard adopted by the Board for equalization, he said that the County in their judgment "lease badly assessed"

would be taken, for none were correctly assessed, and that they would make the best guess they could by bringing the others up to the County adopted; that although he names 40 to 50% as the rate employed by Assessors, the Board endeavored to raise the assessment to approximately 60% of real value. He says that he was chair-
385 man only two years, but that the practice mentioned obtained for the four years during which he was a member of the Board. That the reports of the Board were signed by the members of the Board.

Asked concerning the statements in the reports he said that he had written them all, and endeavored to state the facts; that the last report, though not a very dignified statement, had its foundation in fact; he said, "the report I presume, was somewhat exaggerated," but that it was truthful.

The Court said: "Don't engineers, in their plans and diagrams, exaggerate things so you can see them?" Mr. Shelby (counsel for complainant) answered: "Yes, sir; that is one way of getting at the truth of things.

"The Court: Q. I have seen them exaggerate a profile so that you can see the thing and recognize the truth; and that is the way you did?

The Witness: A. Yes, sir. In that last report it was a little overdrawn.

Counsel for Complainant: Q. But it was exaggerated to call attention to the truth?

A. To call attention to the truth; that was the purpose of it.

The Court: Jesus said it was easier for a camel to go through the eye of a needle than for a rich man to enter the kingdom of Heaven. That is rather exaggerated.

The Attorney General: Mr. Galvin suggests that the poor fellows here believe that is the actual truth.

The Court: Hyperbole is an instrument of the truth."

Here the Attorney General moved to strike the witness' testimony, because he was testifying to his official acts about matters of record; the objection was overruled, and an exception given him.

386 Cross-examined:

He said that his information was confined to the time of his service on the Board; that the Board endeavored to equalize farm lands and town lots at 60% of real value; that before acting they took the oath of office; that he did not construe his oath to require the Board to see that property was "equalized and assessed at its fair cash value." He conceived it their duty "to equalize the taxation between counties." Asked, "At less than the fair cash value?" he answered, "Whatever the assessment was yes, sir. We could only take the statements as returned to us by the Assessors, and from the evidence before us, equalize the tax values as between the counties—not to reassess them." Q. "You didn't conceive it to be within the power of the Board to equalize the counties by raising them up to the fair cash value?" A. "No, sir; we did not."

He said he thought it customary throughout Kentucky for As-

sessors to accept the values given by individual taxpayers. He did not say he was acquainted with the values of real property throughout the State, but was in his own particular neighborhood; that his opinion in changing and raising values was based upon the testimony of witnesses brought before the Board, from examination of transfer sheets sent there, and from the knowledge that members of the Board had of values in different parts of the State.

That his home was close to Fayette but he did not say that he was familiar with the assessed and true value of property in Fayette County. Asked to indicate a particular piece of property in that County, and speak with reference to it, he said he could not recall particular instances, that practically every county in the State was before the Board every year, and it would choose from the
387 transfer sheets certain properties that had been sold at one price and transferred and assessed at another. He mentioned a certain piece of property. He said he did not assess his own property at its true value, nor did the people of his county. He said that his county was not raised in value over the assessment, although he knew that it was not properly assessed, and explained that he made a motion before the Board every year to raise it, but that his County Judge urged before the Board that the witness was over-anxious, and was sustained. He thinks there was not a single County, the home of a member of the Board, that was not raised, except his; but in most instances there was division in the Board; that there was such in regard to Fayette County. He spoke concerning other counties, and explaining why they were not raised, said that if raised they would have been raised in excess of every other county in the State, that none of them was assessed at true value.

Asked if they could have been equalized if all raised to true value, said, "I don't know that we had the authority to do that. But I am satisfied that I would not have been here testifying, if we had." Asked if the trouble would have been with the Assessors or the people, said, "I think Franklin County (place of testifying) being the nearest, would have gotten me first, and the other 118 counties, in the order in which I went through them." Asked "Is it not a fact that people generally, systematically and intentionally prevent the Assessors and other officers from doing their duty, just as they prevented you from doing your duty?" he answered, "I think there are many reasons for the Assessors not doing their duty. Asked, "Was not the reason you didn't raise it because, as you say, you
388 would not have been here to testify—that the people would have dealt with you?" He answered, "No, that was a secondary consideration. I don't think that was within the scope of the Board, or that it was their business to equalize the assessment by raising the counties to their fair cash value. I didn't think we had the right to re-assess every county in the State." Asked as to the reason for faulty assessment, said, "Well, I think many of them (Assessors) were incompetent. Many of them were elected for wrong reasons—because they couldn't support themselves in any other way. And in many instances the Assessors were candidates for Sheriff, and they made friends during the assessment period—nearly all of them. And then another reason, they didn't want their coun-

ties to pay an undue proportion of the taxes, and they undertook to protect them. Many of them so testified—they didn't want to assess their counties higher than other people were assessed."

"The Court: I have an idea that, really, that is the greatest trouble about getting a raise."

Attorney General Garnett: I think so.

Q. Did you find during your investigations in that position that the Assessors throughout the State had entered into any agreement to assess the property at less than its fair cash value, or whether that assessing was done upon the detached, independent action of the different assessors, for the reasons you have assigned?

A. I don't think any Assessor confessed to that; but from an examination of witnesses and matters of transfer—for instance, we would have occasion where all the transferred property was shown to be assessed at 80%, and if we would ask the Assessor if he had assessed the rest of the property at that rate, he would admit that he had not, that he had probably attempted to put it at 45% of its real value—that that was what he understood was done in the
389 neighboring counties, what they were assessed at. Many of them admitted that they didn't attempt to assess at more than 40 or 50% of the value of the property. And the Board of Supervisors did the same thing, many of them."

He did not think the Board had authority to raise assessments to 100%, but had to take the Assessors' returns, and, as far as they could, equalize that property by lowering that which was too high and increasing that which was too low, that if none was too high, the Board selected the one nearest to correct assessment and endeavored as best they could guess to bring the other counties up to that; that such was the construction of the Board as to their duties; that it was his understanding that it was the Assessors' duty to assess all property at 100%, where he was acquainted with each particular piece; that he did not regard it the Board's duty to equalize to 100%, and did not so understand it now.

Asked if he would have equalized at 100% if he had understood the law to require it, he said, "I don't know; I probably would not have done so. The State assumes that the property will produce about so much on a given assessment, that it will run somewhere the same; and that that is sufficient, or ought to be sufficient, for paying the State's expenses. That would have doubled the revenue of the State, practically. I don't think I would have done that, even if I had thought it was the law, but I didn't believe that was the law."

"Q. If you had known it was the law, wouldn't you have followed it?

A. I don't think that I should; I don't know how I could, to begin with."

Asked why, said, "I wouldn't have known just how to get
390 at it except by comparison of what we had;" that he would not have known how to compare counties known to him with those not known to him.

To the suggestion of the court that it would have been practically impossible for the Board, sitting at Frankfort, to assess at fair cash

value, he said "We didn't have that familarity with values that would have enabled us to do that."

He said, responsive to complainant's question, that when the Board was at work, the State and County rates of taxation, based upon the revenue obtainable on the basis of ordinary assessment, had been made, and that in his judgment such rates upon 100% valuation would have raised too much revenue.

Asked by the Attorney General, "Don't you think that money would have kept over until the next year, Judge?" He answered, "I doubt it very much."

391 From the Thirteenth Census of the United States, 1910 Bulletin; title "Agriculture," p. 12, Table 3—Farm property,—value of each class of farm property, appears (line 41) the valuation of all farm property in Kentucky for 1910, $773,797,880; for 1900, $471,045,856, increase $302,752,024, 64.3 per cent. Lands 1910 $484,464,617. Lands 1900, $291,117,430, increase $193,347,187, 66.4 per cent.

From the Report of the State Board of Equalization of Kentucky, Session 1910, Table No. 2, p. 77, heading "Assessed Value of Land," $316,224,665; equalized value of land $341,895,089.

From Report of said Board of Equalization, Session 1911, p. 77, heading "Assessed Value of Land," $334,702,783; equalized value of land $351,555,618.

From the Report of said Board of Equalization, Session 1912, p. 59, title "Assessed Value of Land," $339,284,253, the equalized value not appearing.

392 Complainant read figures from Thirteenth Census of United States, 1910, Bulletin Department of Commerce and Labor, Agriculture—United States, Table 3—Farm Property—Value of Each Class of Farm Property, page 13:

"Line 41, Kentucky Value of Farm Property 1910	$773,797,880
Kentucky Value of Farm Property 1900	471,045,586
Increase	302,752,024
being	64.3%
Kentucky Value of Lands 1910	484,464,617
Kentucky Value of Lands 1900	291,117,430
Increase	193,347,187
being	66.4%

393 Complainant read figures from United States Census 1900 and 1904, Volume on Wealth, Debt and Taxes; Ratio of Assessed to True Value is as follows:

"Figures from United States Census, 1900 and 1904.

Volume on Wealth, Debt and Taxation.

Ratio of Assessment to Full Value in Kentucky.

Total value all property.	1900.	1904.	Pages.
Total Value All Property..	$1,365,130,718	$1,527,486,230	40-41
Less Property Exempt....	73,328,783	77,630,652	38-39
Total Value Taxable Property	1,291,801,935	1,449,855,578	42-42
Assessed Value Taxable Property	650,661,431	700,881,240	40-41
Per cent. of Assessed to Full Value	60-3/10%	48-3/10%	...
Total Value Real Property & Imp'ts.....	795,839,607	859,247,997	40-41
Less Real Property & Imp'ts Exempt	73,328,783	77,630,652	38-39
Total Value Taxable Real & Imp'ts	722,510,824	781,617,345	38-39
Assessed Value Taxable Real & Imp'ts.....	454,048,227	485,788,905	40-41
Per cent. Assessed Real Property & Improvements to Full Value.....	62-8/10%	62-2/10%	...
Total Value Personalty...	569,291,111	668,238,233	40-41
Assessed Value Personalty.	196,613,204	215,092,335	40-41
Per cent. Assessed Personalty to Full Value.....	34-5/10%	32-2/10%	...

The extracts read by complainant from the Report- of the State Board of Equalization of Kentucky, Session- 1910, 1911 and 1912, were respectively as follows:

From Report of State Board of Equalization, Session 1910:

394 "Revenue laws provide that all property shall be assessed at its fair cash value. It was not contended that this was done in a single county; therefore, the Board of Equalization was not privileged to reduce any return assessment."

(*a*) From the Report of State Board of Equalization of Kentucky Session 1911:

"In this, as in former years, there was no occasion for reducing any county's returned assessment. Not one of them was assessed at a measure of its fair cash value. * * * The law governing the Board has not been changed in any particular during your administration. The Legislature has not seen fit to make an addition or change which would enable the Board to more *probably* arrive at an accurate conclusion in its endeavor to equalize values among the counties.

The transfer sheets upon which we are to primarily base our decision, as they are at present returned, are in most cases almost

worthless; some for the reason that the purchase price is purposely hidden under $1.00 and other considerations"; many have no value fixed by the county supervisors; some have no value fixed by the assessor; much is "listed with other property"; in numbers of instances the acreage is not given; in nearly all some one term is withheld, which makes a comparison between the sale value, assessed value and supervisor's value impossible. In many cases, it is a result of ignorance, carelessness or slovenness; in others, shrewdness and duplicity—done purposely to mislead. When witnesses are sent, they oftener serve to confuse than otherwise. All witnesses who appear before the Board are appointed by the County Judge after he has received notice of a tentative raise by the Board. It is seldom that the Judge will select a witness who has not formed an opinion and expressed a desire to appear in defense of his county. All the evidence before the Board is ex parte. The record is made up by the county officials and all witnesses selected for the purpose of testifying for the defense.

There are a few good assessors in the State—we say a "few" for the lack of a general term that expresses a lesser number.

The impression seems to be gaining ground throughout the State that we have a "single tax" system, and that personal property is exempt from taxation, and, inasmuch as real estate is compelled to bear the burden, it is the privilege of the owner and the duty of the officials to connive to list all property at a very low figure. In the matter of personal property no witness testified that the assessor claimed to have assessed it fully, or that the owners had intended to give it in at its worth. In substance, they contend that it is not given in anywhere, and excuse themselves on the ground that it is a matter of perjury or poverty, and exercise their right of choice.

The result is that after the number of lists that the assessor arbitrarily increases is added to the number that the County Board of Supervisors raise, there remains about 95 per cent of the people in the State who fix the sum themselves upon which they are willing to pay taxes, and it is a safe assertion that 99 per cent of that 95 per cent are not inclined to pay a great amount."

(*b*) From Report of State Board of Equalization of Kentucky, Session 1912:

"Our figures for this year show a decrease in the total assessments on real and personal property. We made raises only where
395 a great falling off was shown in assessment as compared with the preceding year, it being the policy of the Board not to increase arbitrarily the assessment of any county.

This Board has endeavored at all times to be fair in its deliberations, and has, as far as possible, tried to satisfy the various representatives who have appeared before it to protest against a raise in assessment; yet it has not, at any time overlooked its duty to the State of Kentucky."

From Report of State Board of Equalization of Kentucky, Session 1911, p. 72, Table 1:

Grand total value of all property as assessed for taxation	$816,085,240.00
Grand total value of all property as equalized for taxation	$845,454,020.00
Total amount of taxes	$4,232,269.77
P. 21, Table No. 1 Continued: Value of each tract with improvements, total	$334,702,783.
P. 37, Table No. 1 continued: Value of Agricultural Implements	2,393,795.
P. 69, Table No. 1 Continued: Total assessed value of lands	334,702,783.
P. 69, Table No. 1 Cont.: Total Assessed Value of personal property not subject to equalization	83,468,030.
P. 65, Table No. 1 Cont.: Total assessed value of personal property subject to equalization	164,485,132.
P. 69, Table No. 1 Cont.: Total equalized value of personal property subject to equalization	124,905,527.
P. 65, Table No. 1 Cont.: Total equalized value of town lots	286,524,845.
P. 65, Table No. 1 Cont.: Total Assessed value of town lots	277,285,015.
P. 65, Table No. 1 Cont.: Total equalized value of lands	351,555,618.

396 From report of State Board of Equalization of Kentucky, Session 1912, p. 70, Table No. 1:

Grand total value of all property as assessed for taxation	$824,763,252.00
Grand total value of all property equalized for taxation	840,479,194.00
Grand amount of taxes	4,202,395.97
P. 18, Table No. 1 Cont.: Value of each tract with improvements, total	339,284,253.
P. 39, Table No. 1 Cont.: Value of Agricultural Implements	2,199,642.
P. 59, Table No. 1 Cont.: Total Assessed Value of Lands	339,284,253.
P. 59, Table No. 1 Cont.: Total assessed value of personal property not subject to equalization	83,147,772.
P. 67, Table No. 1 Cont.: Total Assessed Value of personal property subject to equalization	160,635,585.

P. 70, Table No. 1 Cont.:
Total equalized value of personal property subject to equalization..... 121,859,812.

P. 67, Table No. 1 Cont.:
Total equalized value of town lots..... 286,135,576.

P. 63, Table No. 1 Cont.:
Total assessed value of town lots..... 282,958,957.

P. 63, Table No. 1 Cont.:
Total equalized value of lands..... 349,336,034.

397 Complainant read from the Report of the Special Tax Commission 1912-14 appointed in conformity with the provisions of House Resolution No. 24, regular Session of the Legislature of 1912, approved March 15, 1912 to "investigate revenue and taxation in this State and recommend a plan for the revision thereof as follows (page 36):

"Farm Lands Assessed at Fifty-two per cent. of True Value.

Thus our tables show that the average ratio of assessed value to true value of farm lands throughout the State is about fifty-two per cent. This establishes the fact of universal undervaluation, although the law calls for full value, and even if, let us suppose, 40 or 60% instead of 52% were the correct figures, that conclusion would be just the same. Again our tables show that the range is from 30% in Taylor county to 80.6% in Jackson. This proves grave inequality between counties, and even if Taylor should eventually prove to be assessed at 40% and Jackson at 70%, inequality exists just the same. For another purpose the accuracy of the general State average is important, and on that account no pains have been spared to ascertain the correct figures, which we place at 52%."

Also from pages 193 to 232, inclusive, of said Report as follows:

State at Large.

Total Assessment Roll, 1912..... $840,479,194
Estimated Average State and County Tax Rate..... $1.20 per $100

Approximate land area..... 25,715,840 acres
Land assessed in tracts..... 23,891,526 acres

Other lands ..... 1,924,314 acres

Percentage of land area in farms..... 80%
23,791,526 acres in tracts with improvements assessed at ..... $341,895,089 or $14.37 per acre
22,189,127 acres in farms with improvements, census value ..... 635,459,372 or 28.64 per acre
Probable ratio of assessed to true value..... 52%
Approximate ratio taxes to true value..... .62 of 1%

Adair County. Lands and improvements assessed at..... $1,572,914
United States Census value..... 3,271,214
Probable ratio of assessed to true value..... 46%
Anderson County. Lands and improvements assessed at.... 1,882,750
United States Census value..... 3,751,635
Probable ratio of assessed to true value..... 51%

398

Allen County. Assessed value..... $1,576,961
Census value 3,421,135
Ratio 47%
Ballard County. Assessed value..... $2,115,743
Census value 5,751,733
Ratio 36%
Barren County. Assessed value..... $3,095,411
Census value 9,012,307
Ratio 35%
Bath County. Assessed value..... 3,502,234
Census value 7,064,622
Ratio 42%
Bell County. Assessed value..... $2,327,797
Census value 1,760,397
Ratio 58%
Boone County. Assessed value..... $4,819,497
Census value 7,420,427
Ratio 62%
Bourbon County. Assessed value..... $10,824,077
Census value 19,812,187
Ratio 56%
Boyd County. Assessed value..... $1,313,305
Census value 1,819,746
Ratio 58.5%
Boyle County. Assessed value..... $3,869,610
Census value 7,787,851
Ratio 49%
Bracken County. Assessed value..... $2,346,642
Census value 5,492,605
Ratio 42%
Breathitt County. Assessed value..... $1,573,306
Census value 2,457,403
Ratio 61%
Breckenridge County. Assessed value..... $2,409,984
Census value 4,174,672
Ratio 60%
Bullitt County. Assessed value..... $1,810,948
Census value 3,067,745
Ratio 52%

Butler County, Assessed value		$1,733,344
Census value		2,385,305
Ratio	72%	
Caldwell County, Assessed value		$2 023,747
Census value		3,037,150
Ratio	64%	

399

Calloway County, Assessed value		$2,871,976
Census value		4,938,940
Ratio	57%	
Campbell County, Assessed value		4,139,086
Census value		5,405,172
Ratio	74%	
Carlisle County, Assessed value		1,823,793
Census value		3,936,746
Ratio	45%	
Carroll County, Assessed value		1,717,266
Census value		3,447,196
Ratio	50%	
Carter County, Assessed value		1,325,165
Census value		2,818,860
Ratio	42%	
Casey County, Assessed value		1,567,970
Census value		2,764,330
Ratio	55%	
Christian County, Assessed value		5,933,750
Census value		11,203,650
Ratio	53%	
Clark County, Assessed value		5,878,700
Census value		12,530,590
Ratio	45%	
Clay County, Assessed value		1,532,110
Census value		2,322,346
Ratio	56%	
Clinton County, Assessed value		862,384
Census value		1,479,081
Ratio	58%	
Crittenden County, Assessed value		1,755,816
Census value		2,952,821
Ratio	58%	
Cumberland County, Assessed value		1,269,018
Census value		2,131,169
Ratio	61%	
Daviess County, Assessed value		6,755,412
Census value		14,175,347
Ratio	46.6%	
Edmonson County, Assessed value		1,267,098
Census value		1,798,135
Ratio	71.8%	
Elliott County, Assessed value		684,240
Census value		1,181,070
Ratio	63%	

400

Estill County, Assessed valu		$980,560
Census value		1,984,767
Ratio	54.4%	
Fayette Co., Assessed value		13,378,361
Census value		22,744,934
Ratio	54%	
Fleming County, Assessed value		3,920,289
Census value		9,059,308
Ratio	43%	

Floyd County, Assessed value		2,032,933
Census value		3,118,948
Ratio	46%	
Franklin County, Assessed value		3,094,322
Census value		5,738,587
Ratio	55%	
Fulton County, Assessed value		2,188,316
Census value		4,804,134
Ratio	36%	
Gallatin County, Assessed value		996,205
Census value		2,147,280
Ratio	46%	
Garrard County, Assessed value		4,325,120
Census value		8,018,299
Ratio	51.5%	
Grant County, Assessed value		2,699,176
Census value		5,634,765
Ratio	47%	
Graves County, Assessed value		5,451,734
Census value		9,375,403
Ratio	58.5%	
Grayson County, Assessed value		1,534,467
Census value		3,573,784
Ratio	44%	
Green County, Assessed value		979,081
Census value		3,153,496
Ratio	33.6%	
Greenup County, Assessed value		1,341,900
Census value		2,850,590
Ratio	48%	
Hancock County, Assessed value		1,404,611
Census value		2,152,052
Ratio	59%	
Hardin County, Assessed value		3,493,844
Census value		7,475,233
Ratio	47%	

401

Harlan County, Assessed value		$2,585,580
Census value		3,272,411
Ratio	47.4%	
Harrison County, Assessed value		5,529,770
Census value		11,058,070
Ratio	50%	
Hart County, Assessed value		2,093,308
Census value		5,239,836
Ratio	34.4%	
Henderson County, Assessed value		6,333,821
Census value		10,389,434
Ratio	51.5%	
Henry County, Assessed value		4,031,438
Census value		8,898,332
Ratio	45.6%	
Hickman County, Assessed value		2,829,462
Census value		5,309,019
Ratio	48%	
Hopkins County, Assessed value		3,178,823
Census value		7,742,602
Ratio	36%	
Jackson County, Assessed value		1,153,593
Census value		1,109,253
Ratio	80.6%	
Jefferson County, Assessed value		15,505,750
Census value		23,715,574
Ratio	60.5%	

Jessamine County, Assessed value		4,815,951
Census value		8,529,690
Ratio	52.7%	
Johnson County, Assessed value		1,605,499
Census value		2,474,899
Ratio	59%	
Kenton County, Assessed value		4,410,363
Census value		4,964,563
Ratio	78.5%	
Knott County, Assessed value		1,056,032
Census value		1,686,023
Ratio	65%	
Knox County, Assessed value		2,028,548
Census value		2,478,881
Ratio	75.4%	
Larue County, Assessed value		2,129,638
Census value		3,959,859
Ratio	53%	
Laurel County, Assessed value		1,484,286
Census value		2,433,489
Ratio	48%	
Lawrence County, Assessed value		1,540,085
Census value		2,833,114
Ratio	54.7%	

402

Lee County, Assessed value		$573,652
Census value		783,938
Ratio	49.5%	
Leslie County, Assessed value		1,352,001
Census value		1,358,035
Ratio	62%	
Letcher County, Assessed value		1,623,547
Census value		1,287,628
Ratio	76%	
Lewis County, Assessed value		1,836,734
Census value		3,472,900
Ratio	45%	
Lincoln County, Assessed value		4,216,343
Census value		7,875,335
Ratio	51%	
Livingston County, Assessed value		1,790,292
Census value		2,843,625
Ratio	61%	
Logan County, Assessed value		3,553,961
Census value		8,766,539
Ratio	41%	
Lyon Co., Assessed value		1,008,396
Census value		1,628,421
Ratio	47.7%	
Madison Co., Assessed value		7,635,970
Census value		13,390,218
Ratio	57.6%	
Magoffin County, Assessed value		1,075,880
Census value		1,963,557
Ratio	56%	
Marion County, Assessed value		2,560,691
Census value		6,095,006
Ratio	42%	
Marshall Co., Assessed value		2,074,520
Census value		4,183,373
Ratio	48%	
Martin Co., Assessed value		881,803
Census value		805,756
Ratio	51%	

Mason Co., Assessed value		6,233,675
Census value		12,032,184
Ratio	52%	
McCracken County, Assessed value		2,939,356
Census value		5,243,944
Ratio	49%	
McLean County, Assessed value		1,820,832
Census value		4,213,041
Ratio	43%	

403

Meade County, Assessed value		$1,802,432
Census value		2,915,292
Ratio	58%	
Menifee County, Assessed value		491,185
Census value		764,066
Ratio	51%	
Mercer County, Assessed value		4,666,780
Census value		8,508,332
Ratio	53.5%	
Metcalfe County, Assessed value		1,170,701
Census value		2,758,860
Ratio	41%	
Monroe County, Assessed value		1,419,795
Census value		2,330,624
Ratio	63%	
Montgomery County, Assessed value		3,692,525
Census value		8,223,165
Ratio	44%	
Morgan County, Assessed value		1,890,529
Census value		2,392,045
Ratio	76.7%	
Muhlenburg County, Assessed value		2,237,750
Census value		4,035,443
Ratio	43%	
Nelson County, Assessed value		4,025,440
Census value		6,688,789
Ratio	56%	
Nicholas County, Assessed value		3,207,166
Census value		7,293,727
Ratio	40.6%	
Ohio County, Assessed value		3,064,006
Census value		4,907,504
Ratio	59%	
Oldham County, Assessed value		2,541,534
Census value		4,455,865
Ratio	52%	
Owen County, Assessed value		2,660,748
Census value		6,678,405
Ratio	40%	
Owsley County, Assessed value		671,865
Census value		986,426
Ratio	67%	
Pendleton County, Assessed value		2,733,144
Census value		5,028,921
Ratio	55%	
Perry County, Assessed value		1,287,982
Census value		1,538,118
Ratio	58%	
Pike Co., Assessed value		3,450,612
Census value		5,280,458
Ratio	66.5%	

404

Powell County, Assessed value		$590,310
Census value		2,062,961
Ratio	40%	

Pulaski County, Assessed value		3,131,790
Census value		4,154,659
Ratio	69.4%	
Robertson County, Assessed value		839,227
Census value		2,509,929
Ratio	32%	
Rockcastle County, Assessed value		966,441
Census value		1,796,867
Ratio	52%	
Rowan County, Assessed value		673,396
Census value		825,089
Ratio	45.5%	
Russell County, Assessed value		1,111,108
Census value		1,801,855
Ratio	62.5%	
Scott County, Assessed value		6,291,067
Census value		12,790,888
Ratio	51.6%	
Shelby County, Assessed value		8,459,512
Census value		15,960,694
Ratio	53%	
Simpson County, Assessed value		1,854,864
Census value		5,330,386
Ratio	35.4%	
Spencer County, Assessed value		1,884,970
Census value		4,581,366
Ratio	41%	
Taylor County, Assessed value		985,357
Census value		3,116,967
Ratio	30%	
Todd County, Assessed value		2,521,638
Census value		5,593,257
Ratio	45%	
Trigg County, Assessed value		2,110,351
Census value		2,974,735
Ratio	72%	
Trimble County, Assessed value		1,379,550
Census value		2,571,262
Ratio	56.5%	
Union County, Assessed value		5,351,997
Census value		10,777,322
Ratio	48%	
Warren County, Assessed value		6,065,047
Census value		10,915,125
Ratio	55%	
Washington County, Assessed value		2,795,185
Census value		7,706,972
Ratio	38%	

405

Wayne County, Assessed value		$2,230,718
Census value		3,563,277
Ratio	59%	
Webster County, Assessed value		2,121,388
Census value		6,334,062
Ratio	34%	
Whitley County, Assessed value		2,803,794
Census value		2,863,107
Ratio	71.5%	
Wolfe County, Assessed value		945,202
Census value		1,460,716
Ratio	62%	
Woodford County, Assessed value		6,347,387
Census value		11,543,015
Ratio	56%	

406 (*e*) The complainant introduced a number of affidavits made by divers persons residing in the different Counties through which its railroad in Kentucky runs, showing the ratio of assessed value to actual fair cash value of real and personal property in such Counties, such affidavits being in form as follows:

"To whom it may concern:

I, —, the undersigned, being duly sworn, depose and say that I am a resident of — County, that my occupation is —, that I am familiar with the value of property in said County and also with the assessment of the same at the present time and for the past two years. I further depose and say that to my best knowledge and belief the aggregate assessment of realty in said County for the year 1911 or 1912 does not exceed —% of the actual value of the aggregate taxable realty in said County, and that the aggregate assessment of personalty in said County does not exceed —% of the aggregate actual value of taxable personalty in said County.

—— ——.
—— ——."

Such affidavit was made by the following residents of Ballard County, viz., J. N. Trimble, President First National Bank, who fixed the ratio of realty at 50 percent and of personalty at 60 percent; V. A. Crice, Sheriff of the County, who fixed such value as to realty at 50 percent, and of personalty at 65 percent; William Henderson, Circuit Court Clerk, who fixed the ratio of realty at 45 percent and of personalty at 65 percent; B. F. Billington, Merchant and Farmer, who fixed the ratio of realty at 50 percent, and of personalty at 50 percent.

Such affidavit was made by the following residents of Caldwell County, viz., Henry Towery, Sheriff, who fixed the ratio of realty at 60 percent, and of personalty at 50 percent; M. P. Smith, County Judge, who fixed ratio of realty at 60 percent, and of personalty at 50 percent; R. L. Gresham, County Court Clerk, who fixed
407 the ratio of realty at 60 percent, and personalty at 50 percent; J. D. Leech, President Farmers National Bank, who fixed the ratio of realty at 60 percent, and of personalty at 50 percent; W. D. Dawson, who fixed the ratio of realty at 60 percent, and of personalty at 50 percent.

Such affidavit was made by the following residents of Carlisle County, viz., John E. Kane, lawyer and farmer, who fixed the ratio of realty at 60 percent, and of personalty at 50 percent; James R. Burnley, Sheriff, who fixed the ratio of realty at 60 percent, and of personalty at 60 percent; J. O. Glenn, Cashier Deposit Bank, who fixed the ratio of realty at 60 percent, and of personalty at 60 percent.

Such affidavit was made by the following residents of Christian County, viz., E. C. Radford, Real Estate Dealer, who fixed the ratio of realty at 50 percent, and of personalty at 50 percent; G. L. Campbell, farmer, who fixed the ratio of realty at 50 percent, and personalty at 50 percent; T. J. McReynolds, Real Estate Dealer,

who fixed the ratio of realty at 50 percent, and of personalty at 50 percent; W. T. Tandy, President City Bank & Trust Co., who fixed the ratio of realty at 60 percent, and of personalty at 50 percent; W. A. Radford, Circuit Clerk, who fixed the ratio of realty at 60 percent, and of personalty at 60 percent.

Such affidavit was made by the following resident of Daviess County, viz., T. A. Pedley, Accountant, who fixed the ratio of realty at 60 percent, and of personalty at 40 percent.

Such affidavit was made by the following residents of Fulton County, viz., H. C. Taylor, Police Judge of Fulton, who fixed the ratio of realty at 60 percent, and of personalty at 50 percent; R. N. Chowning, President First National Bank, who fixed the ratio of realty at 45 percent, and of personalty at 25 percent.

Such affidavit was made by the following residents of Henderson County, viz., H. H. Williams, Jailer, who fixed the ratio of realty at 60 percent, and of personalty at 15 percent; David Banks,
408 Cashier Union Bank & Trust Co, who fixed the ratio of realty at 60 percent, and of personalty at 15 percent; Robert E. Johnston, Teller Henderson National Bank, who fixed the ratio of realty at 60 percent, and of personalty at 15 percent; Gabriel W. Crutcher, Cashier Henderson County Savings Bank, who fixed the ratio of realty at 60 percent, and personalty at 25 percent; A. H. Abbott, Sheriff, who fixed the ratio of realty at 60 percent, and of personalty at 40 percent.

Such affidavit was made by the following residents of Lyon County, viz., J. M. Smith, Farmer and Banker, who fixed the ratio of realty at 60 percent, and of personalty at 50 percent; W. N. Cummins, Banker, who fixed the ratio of realty at 60 percent, and of personalty at 50 percent; T. P. Gray, Judge County Court, who fixed the ratio of realty at 60 percent, and of personalty at 50 percent; U. S. King, Clerk of County Court, who fixed the ratio of realty at 60 percent, and of personalty at 50 percent; Samuel G. Cash, Sheriff, who fixed the ratio of realty at 60 percent, and of personalty at 50 percent.

Such affidavit was made by the following resident of Marshall County, viz., J. H. Little, farmer, who fixed the ratio of realty at 60 percent, and of personalty at 65 percent.

Such affidavit was made by the following residents of Muhlenberg County, viz., D. M. Rall, Deputy Sheriff, who fixed the ratio of realty at 50 percent, and of personalty at 50 percent; W. D. Blackwell, Ex-Sheriff, who fixed the ratio of realty at 50 percent, and of personalty at 50 percent; H. C. Lewis, Assistant Cashier Muhlenberg Co. Bank, and former Deputy Clerk of Muhlenberg County, who fixed the ratio of realty at 50 percent, and of personalty at 50 percent; G. M. York, jailer, who fixed the ratio of realty at 50 or 60 percent, and of personalty at 50 or 60 percent; C. E. Blackwell, Chief of Police, former Deputy Assessor, former Sheriff and Tax Collector, who fixed the ratio of realty at 40 percent, and of personalty at 30 percent.

409 Complainant read in evidence the affidavits filed at the hearing of the Louisville & Nashville Railroad Company be-

fore the Board of Valuation & Assessment, in 1913, showing ratio of assessed value to real value of Kentucky property for 1912 and 1913, as per item 13 of stipulation filed May 4, 1914, as follows:

Affidavit of H. M. Whitaker, resident of Pulaski County, formerly of Laurel County; large land-owner and ex-Assessor of Laurel County for 1902, 1903, 1904 and 1905. Affiant says that the land-owners generally, intentionally and uniformly assessed their land and other property at about 60% of its actual cash value, which valuation was passed upon by the County Board of Supervisors and accepted.

J. J. Ferrill, Deputy Assessor of Henderson County, said
410 that it was then and had been for years the custom in said county to assess real and personal estate, including farm lands and town lots, at not exceeding 60% of its fair cash value, estimated at the price it would bring at a fair voluntary sale, and that such assessments were intentionally, habitually, uniformly and systematically made at said rate, and that said assessments were not raised by the County Board or County authorities; that property in the City of Henderson was assessed at from 65 to 70% of its value.

A. H. Abbott, Sheriff of Henderson County, made similar affidavit as to the intentional, habitual, uniform and systematic assessment of property at 60% of such fair cash value.

Ben T. Kimsey, a farmer in Henderson County, made exactly similar affidavit.

A. J. Douthitt, a farmer, and for 16 years Clerk of the Circuit Court of Henry County, familiar with values of property in said county and with the assessment thereof for taxation, said that for many years such property had been assessed at not exceeding 60% of its fair cash value, and that it had been the general and recognized custom of property-holders in said county to list their property for taxation at not exceeding 60% of its fair cash value, and that listing at 60% was uniformly, intentionally and generally recognized as a fair and just listing for taxation.

J. V. Pearce, a merchant in New Castle, Henry County, and ex-Assessor for four years, made similar affidavit.

S. Bruce, Judge of the County Court of Henry County, and once member of the County Board of Equalization of said county, made similar affidavit.

William List, a farmer in said county, made similar
411 affidavit.

M. J. Jones, for eleven years Clerk of the County Court of and then Clerk, made similar affidavit.

S. T. Douthitt, for eight years Clerk of the Henry County Court, and then Clerk, made similar affidavit.

Clem Johnson, City Assessor of Lebanon, Marion County, Kentucky, acted under a uniform and established custom that had prevailed there for many years, of assessing property at 60% of its real value, based upon the price it would bring at a fair voluntary sale, except where a transfer had been made during the preceding year, in which event the assessment was made at 80% of the value fixed in the conveyance; but that said valuation of 80% obtained for only a single year, and that thereafter the property was assessed as other

property, at 60%; that real and personal property of all kinds, other than cash, notes secured by mortgage and bonds had been assessed by affiant for 1913 on a basis of 60%; that affiant had examined the City Assessor's book for 1911, and found the same method of valuation at 60% to have obtained for 1911-1912; that affiant had learned that for 1913 the assessment for State and County purposes on the same property was for even a less per cent. than for city purposes, and in no case which had come under his observation had the assessment for State and County purposes been higher than the city assessment.

Affiant, Sam J. Spalding, County Clerk of Marion County for four years and previously Deputy County Clerk, and Clerk of the Board of Supervisors, had had occasion to go over the Assessor's rolls, and was familiar with the basis of assessment of property for taxation,
and said that cash, cash in bank, or notes secured by mort-
412 gage, and bonds (where they were assessed at all) were assessed approximately at "100% of their valuation;" that all other personalty and farming lands up to 1910 were assessed and equalized on a basis not exceeding 60% of their real value, except where a transfer had been made during the year, in which case the assessment was at 80% of the real value as fixed in the conveyance; such 80% valuation obtaining for a single year, after which the property was assessed as other property, at 60%; that for several years prior to 1910, farming lands were assessed and equalized on a basis of from 55 to 60% of their real value, and for 1911, 1912 and 1913 the average valuation had been increased approximately from 10 to 12% over previous years; that it had been, prior to November 13, 1913 (date of affidavit) the uniform and established custom in Marion County for many years to assess personalty and farming lands at about 50 or 60% of their real value; that the total assessment for farm lands was less in 1913 than in 1912, and there was only a small increase in town lots for 1913 over 1912, and the total assessment of all property after equalization by the County Board, in 1913, was less than in 1912.

Affiant, Herndon Goodin, Deputy Clerk of Marion County for 1910, 1911, 1912 and 1913, and Clerk of Supervisors, made similar affidavit, except he said that farming lands for 1913 were assessed and equalized on a basis not exceeding 70% of their real value. He made similar exception of cases of transfers, wherein property was assessed for a single year at 80%, and thereafter on a basis of other property. Affiant further said that it had been the uniform and established custom in said county for many years for the Assessor to value personal property and farm lands at about 55 or 60% of
the real value, and that they were equalized at practically the
413 same per cent.; that he had found the assessment for State and County purposes less than that for City purposes. Affiant excepted cash, notes, mortgages and bonds. He said that part of the farm lands in said county were assessed and equalized at 50% of real value, and some even lower.

Affiant, Charles L. Hunter, City Assessor for 1910 and 1911 of

Lebanon, Marion County, Kentucky, made similar affidavit to that of Goodin.

Charles C. Boldrick, for years a member of the County Board of Supervisors for Marion County, familiar with the basis of assessment of property, found personalty, (excepting cash, notes and bonds,) and farming lands assessed and equalized for 1913 on a basis not exceeding 70% of real value, except in the case of a transfer during the preceding year, in which event an 80% assessment was made for a single year, after which the property was treated on a basis of other property; that for 1909 and 1910 personalty and farming lands were assessed and equalized in the County on a basis of 55 to 60% of real value, and for 1911, 1912 and 1913, the assessment was increased 10%; that it had been the uniform custom in the county for many years to assess personal property and farming lands at 55 to 60% of real value, until 1913, when at was fixed at 65%. Affiant fixed State and County assessment at less than city assessment.

A. Kelly, a member of said County Board of Supervisors for 1913, for Marion County, fixed the basis of assessment for personal property, (except bonds, mortgages and cash) and of farming lands, for 1913, at 70% of real value, and otherwise concurred in the testimony of Boldrick.

C. S. Williams, Deputy Tax Collector for Hoskins County, and familiar for years with assessment of property in said county, said that it was and for years had been the custom in said county to assess personal property and real estate, including lands and town
414 lots, at not exceeding 33⅓% of their fair cash value, and that said assessments were intentionally, habitually, uniformly and systematically made at said rate, and that said percentage was not exceeded after the action of the County Board of Equalization with respect to lands and town lots.

Henry Brandenburgh, for twelve years a resident of Lee County, Ky., and acquainted with values of real estate in said county, once a member of the Board of Supervisors, said that real estate in said County was generally assessed at not exceeding 60% of its real value, and that the basis of assessment of personal property, cash, notes, etc., was probably about the same, and that, as far as his knowledge extended, farm lands and town lots, in very rare cases, if at all, were assessed at exceeding 60% of their fair cash value, and that in some cases land was assessed at 50% of such value, and that affiant had frequently appeared before the County Board of Supervisors, acting with reference to assessments or to raising assessments, and that in only very few instances had he observed such assessments changed; that in rare instances he had known the Board to increase values to about 70% of real value; and that in ninety per cent. of all the lists, there was no change made by the Supervisors; so that it was his general observation that final assessment did not exceed 60% of fair value.

G. W. Cann, of Lee County, acquainted with values in said county for 27 years, and ex-County Clerk and ex-Circuit Clerk, made similar affidavit.

C. B. Lovelance, County Clerk of the county for nearly four years, made similar affidavit.

Chas. Eveleth, acquainted with values in said county of
415 Lee, made similar affidavit.

Thomas Pryse, sixty-nine years old, resided in Lee County for forty-five years, had been Trustee of the Jury Fund for four years, and was acquainted with values and with the assessment of property in said county, said that real estate in said county was generally assessed at not exceeding 60% of its real value, and that personal property—cash, notes, etc.—was probably assessed on the same basis. Made similar affidavit to that of Lovelace.

G. T. Perkins, well acquainted with values of real estate in Lee County, and ex-Member of Board of Supervisors, made similar affidavit to that of Lovelance.

J. W. Moren, resident of Laurel County, and acquainted with values, and Ex-Sheriff of the County, made affidavit that when Sheriff, real and personal property was listed on an average of about 60% of real value, and that the same rule had prevailed since, so far as his knowledge and information goes.

George G. Brock, resident of Laurel County for many years, and acquainted with property values in said county and the way of listing property for taxation, said that after the Board of Supervisors had passed upon the assessment of property, the assessed value did not exceed 60% of real value, and that the custom of property owners was to list it at about 50 to 55% of actual value; that the same was as true of lands as of town lots, and that such assessment was generally and uniformly made by the taxpayers, and that they generally listed at about 50 to 55% of real value.

J. N. Landrum, farmer and merchant, and acquainted in a general way with property in Laurel County, fixed the assessment by taxpayers at from 50 to 60% of real value, and by the Board of Supervisors at not exceeding 60% of real value.

416 C. S. Weakley, Master Commissioner of the Shelby Circuit Court for four years, and a large land owner, and acquainted with the manner of assessing real property for taxation in said county, said that for the first year after a conveyance it was customary to assess at 80% of the purchase price, and thereafter at not exceeding 60% of real value, and that such assessment was approved by the Board of Supervisors; and that it was usual and customary and almost universal to tax property at 60% or less of real value.

W. H. Tipton, of same county, made affidavit to same effect as to assessment at about 60% of real value.

Ed. D. Shinnick, editor and owner of the Shelby Record, a newspaper in Shelby county, and "reasonably well acquainted" with values in Shelby County, concurred in the affidavit of C. S. Weakley.

J. L. Smith, First Deputy to the Sheriff of Shelby County for four years, and Sheriff-elect for next four years, and owner of real estate, and acquainted with values and manner of assessment in said County, said it was customary to assess for the first year after sale at 80% of the purchase price, and thereafter at 60% of real

value, which assessment was approved by the Board and in accordance with the general rule.

Luther Stephens, farmer and ex-Assessor and member of the Board of Supervisors of Shelby County, and acquainted with values of real estate—town and country—and with the practice of assessment thereof for taxation, said that it was customary in the county to list real and personal property at 60% of real value, and that said assessments were intentionally, habitually, uniformly and systematically made at such rates, and that the assessments were not raised by the County Board.

417 W. G. Frazier, ex-County Court Clerk and Assessor-elect, and ex-Deputy Assessor and Deputy County Clerk of Powell County, testified that in his judgment lands, town lots and personalty had not been assessed at over 50% of real value after action of Supervisors.

E. D. Campbell, a resident of Perry County, farmer and merchant, and acquainted with values and the practice of assessing property in said County, said that it had been for years and was then the custom in the County to list for taxation personalty and real estate at 50% of the real value, and that said assessments were intentional, habitual, uniform and systematic, and did not exceed 50% of real value after action of County Board.

Robert B. Combs, of same county, farmer and ex-Sheriff, and acquainted with values, said that it had been the rule and custom to assess at 60% of real value, and that said rule was intentional, habitual, uniform and systematic.

Lewis Feltner, a citizen for 72 years of Perry County, and ex-Assessor and Deputy Assessor, testified to the custom of listing real estate for taxation—city and country lands—at 60% of real value after action of Board of Equalization.

A. C. Yeiser, insurance agent in Ohio County, and familiar with the practice of assessing property in said county, said that it had been the custom in the county for many years to list lands, town lots and personalty at 50% of real value; that such assessments were intentional, habitual, uniform and systematic, and were not exceeded, after action of County Board, and as finally made did not exceed 50% of real value; that affiant was engaged in farm insurance as well as general insurance, and familiar with value.

418 S. J. Weller, a citizen of the same County, and acquainted with values from 1908 to 1913, testified to the same rule of assessment at 60%, regardless of real value, and to the same uniform, intentional, habitual and systematic custom.

R. T. Collins, resident of the same County, and Trustee of the Jury Fund, and acquainted with values in the years from 1908 to 1913, testified to the same custom of assessment at 60% of real value, and to the intentional, habitual, uniform and systematic act of such assessment.

G. H. Fossitt, resident and ex-County Judge of Pendleton County for eight years, and familiar with values and assessments, testified to the custom for eleven years of Assessors and Boards of

Equalization to assess lands, town lots and personalty at 60% or less of real value.

C. W. Carnes, Deputy Sheriff from 1898 to 1902 and Sheriff from 1902 to 1906 of Pendleton County, and Treasurer of said County from 1910 to 1912, and familiar with values for the last fifteen years and with assessments, testified to the custom during all of said time of Assessors and County Boards to assess at 60% or less of real value.

N. R. Strange, ex-Assessor of Warren County for 8 years, testified that during said time, in his judgment, lands in said County on an average and uniformly and intentionally were assessed for taxation at about 60% of real value after action of Board of Supervisors.

C. W. Hall, Assessor for Warren County from 1902 to 1906, and active in management of his office, said that during said period lands uniformly and habitually and on an average were listed and assessed for taxation at not exceeding 65, and he believed, not exceeding 60% of real value, and that said rate applied after action of Supervisors, and was in accordance with custom; that
419 the assessment of personalty, cash, notes, etc., did not exceed 50% of real value.

W. H. Myers, for four terms assessor for Warren County, made similar affidavit.

J. W. Hendricks, City Assessor of Bowling Green, Warren County, from 1903 to 1912, and from 1912 to date, and familiar with values, fixed assessment at not exceeding 60% of real value in City and County after action of supervisors, and personalty at not exceeding 50%.

A. W. Clements, ex-member Board of Supervisors, Sheriff for eight years, and County Judge for eight years, of Warren County, and acquainted with values, fixed ratio of assessment of lands, town lots and personalty, after action of Supervisors, at not exceeding 50%.

L. C. Flournoy, familiar with values, and ex-Judge of County Court from 1886 to 1897, said that in his judgment for the last thirty years the assessed value of realty and personalty in Union County had never exceeded on an average 50% of real value, even after equalization by County Board.

Lucien Lindsay, Sheriff of Todd County, familiar with values, testified that the uniform rule in the County of assessing and equalizing lands transferred from one person to another during the next preceding year was to assess them at 80%, while all other real estate was listed for the same year at not exceeding 50%, approximately, of real value, and that frequently real estate was assessed for taxation at not exceeding 35% of real value, and that it was the purpose at all times of assessing officers and Supervisors that assessed valuation of lands and town lots should not exceed 50% of real value, and that said custom was intentional and uniform.

420 S. M. Perkins, for eight years County Clerk of the County, and familiar with values, made similar affidavit.

W. S. Shelton, for four years Sheriff, and familiar with values, made similar affidavit.

D. M. Butler, for many years Sheriff and familiar with values, made similar affidavit.

H. C. Miller, for four years Assessor of said Todd County, made similar affidavit.

B. D. Butler, for many years Sheriff of said County, made similar affidavit.

J. F. Kirkman, for many years Sheriff and Deputy Sheriff of said County, made similar affidavit.

L. B. Vaughn, Sheriff of Webster County, and acquainted with values and for twenty years with the practice of assessing property testified to the custom for twenty years of assessing personal property and real estate at not exceeding 50% of real value, and to said assessments being intention-, habitual, uniform and systematic at said rate and maintained at the same rate after equalization.

Cosby Campbell, Deputy Sheriff of Webster County, made similar affidavit.

W. G. Edens, a resident of Webster County for thirty years, and a farmer, and County Assessor for four years, and acquainted with values, made similar affidavit.

D. W. Wiley, for six years a resident of Webster County, and farmer, a Deputy Assessor and Legislator, and familiar with values and assessments, made similar affidavit.

James L. Boswell, Sheriff of Carroll County, and ex-Assessor, and familiar with values, testifies to the usual custom while he was Assessor to assess farm lands and town lots at from 50 to 60% of real value, and to the equalization of most property at 50 to 55% of such value, and personalty at the same rate or less.

421 George P. Harris, for forty years a resident of Carroll County, and a farmer, and familiar with values, and Tax Assessor from 1902 to 1905, testifies to the custom, during his term of office, and still prevailing, to assess real estate—farm lands and town lots—at from 50 to 60% of real value, and to equalization of lands at about 55%, and of personalty at about 40%, of real value.

J. F. Ellis, a real estate dealer in Christian County, and familiar with values, testifies to the custom of assessing at not exceeding 60% of real value in said County, after equalization.

W. P. Winfrey, a lawyer and real estate dealer for forty years in Christian County, and acquainted with values, and familiar for over twenty years with assessments in said County, testified to the habitual and uniform custom to assess real and personal property in said County at less than 60% real value, even after equalization.

Thomas S. Knight, real estate dealer in Christian County, and acquainted with values and with assessment of property, made similar affidavit as to assessment at not exceeding 60% of real value.

J. A. Boone, Clerk for four years of County Court of Clark County, and concerned with Assessor's books of said County, and with those of the Board of Equalization, and familiar with values, testifies that for 1913 most of the real and personal property in said County was assessed and equalized at less than 60% of real

value, and at same rate for previous years, except that real estate is assessed at 80% of the price shown in any deed or transfer during the preceding year, but afterwards assessed as other property; and
that affiant believes that no land is assessed at exceeding
422 $60.00 per acre, although much land sells at $150.00 or more per acre.

W. L. Moore, a real estate agent and familiar with values in Whitley County, and for several years Deputy Sheriff, and also a member of the Board of Supervisors for said County, testifies that for over fifteen years it has been the custom in said County to list for taxation personal and real estate at from 50 to 60% of real value, even after equalization.

James Murphy, chief Deputy Sheriff of said Whitley County for four years, makes similar affidavit for 60% raito of assessed to real value.

J. L. Manning, familiar with values and assessments in Whitley County, and Sheriff-elect, testifies that for more than ten years the custom in said County was to assess real and personal property at from 50 to 60% of real value, after equalization.

Robert Monhollen, real estate agent in Whitley County, and during many years Deputy Sheriff, and familiar with values, testifies to similar custom of assessing at not exceeding 60% of real value, and illustrates by the land of G. M. Veach, which he values at $18,000.00, assessed, as appears by affidavit of J. A. Stanfill, Clerk of the County Court, at $10,100.00; land of Henry Finley, worth $18,000.00, assessed, as appears by said Stanfill's affidavit, at $10,000.00; land of George Faulkner, worth $8,000.00, assessed, as appears by Stanfill's affidavit, at $4,000.00; and land of Seberry Woods, worth $8,000.00, assessed, as appears by Stanfill's affidavit, at $4,000.00; and gives other illustrations.

J. A. Stanfill, Clerk of the County Court for Whitley County, testifies that the records in his office showed that G. M. Veach had
425 acres of land, assessed at $10,100.00, September 1, 1912;
423 Henry Finley, 382 acres, assessed at $10,000.00; George Faulkner, 340 acres, assessed at $4,000.00; Seberry Woods, 360 acres, assessed at $4,000.00; and that the real estate owned by John Polly had been listed by him, September 1, 1908, 540 acres, $10,000.00; September 1, 1909, same land, $20,000.00; September 1, 1910, same land, $15,000.00; September 1, 1911, same land, $10,000.00; September 1, 1912, same land, $12,000.00; and that the foregoing were the values placed on the properties of such persons for purpose of taxation, after equalization by the Board of Supervisors.

L. M. Lay, for sixty-seven years a resident of Whitley County, ex-Deputy Sheriff, and for nine years Deputy Assessor, and Assessor-elect, and familiar with assessments, testifies to the custom for fifteen years to assess real and personal estate at from 50 to 60% of real value, and equalization on same basis.

W. E. Clark, liveryman in Greensburg, Green County, Kentucky, and acquainted with real estate values, and for thirty years with assessments, testifies to the custom in said County to assess real and

personal property, including farm lands and town lots, at 50% of real value, such custom being intentional, habitual, uniform and systematic, and said assessments not raised above 50% by the County Board.

Pilson Smith, farmer in said county, and familiar for fifteen years with assessments in Green County, and Supervisor of Census for Congressional District, and Circuit Court Clerk for four years, makes similar affidavit.

A. B. Cox, Deputy Assessor for Green County, and for four years familiar with assessments therein, testifies to same custom, to assess at not exceeding 50% after equalization.

P. F. Marshall, Clerk of the Green County Court, makes
424 similar affidavit.

P. B. Moss, Assessor for Hart County for three years, and Deputy Assessor for three years prior thereto, and resident thereof for sixty-nine years, makes similar affidavit.

H. C. Rice, Deputy Circuit Court Clerk and real estate agent in Bell County, and acquainted with values, and familiar with the practice of assessing property in said County, testifies to the custom to list in said County real and personal property at about 60 to 65% of real value, said custom being intentional, habitual, uniform and systematic, and said rate not exceeded after action of County Board.

Ben R. Smith, for twenty years a resident of Bell County, and a planing mill man, testifies to the uniform custom to assess real and personal property at about 60% of real value, and to assessments finally made after equalization not to exceed 75% of value.

H. B. Jones, attorney and real estate dealer in Bell County, and familiar with assessment, testifies to the uniform custom to assess at 50%, and not exceeding 60% after equalization.

C. N. Miller, property owner in Bell County, and familiar with values and with assessments, testifies that the County Board, in his opinion, values property at about 40 to 50% of actual value.

C. E. Herd, a resident of Bell County for fourteen years, and an attorney and newspaper editor, and familiar with values and assessments, fixes the ratio of assessed to real value at not over 50%, in a few instances more, but in many instances less.

H. C. Chappell, real estate agent in Bell County, and familiar with values and assessments, fixes 50% after equalization,
425 as the ratio of assessed to real value.

H. H. Steele, connected with the Land Department of the Middlesboro Town Lots Company, of Bell County, for over twenty years, and familiar with Assessor's books and books of County Board and City Board, estimates assessment, after equalization, at about 40% of real value.

J. W. Campbell, for over twenty years a resident of Bell County, Assessor for four years, and City Assessor for six, and familiar with valuation by County Board, fixes such valuation or assessment at from 40 to 50% of real value.

A. C. Snyder, City Assessor for six years of Middlesboro, Bell County, and ex-member of the County Board for five or six years,

and having served on City Board often, and familiar with values, says that the assessed value does not exceed 65% of real value.

L. L. Robertson, physician and banker, of Bell County, and familiar with values, fixes 60% as the maximum ratio of assessed to real value.

J. E. McFarland, Special Tax Collector of Taylor County, and familiar with values, says that the assessed value is not over 60% of real value, often less, and such listing has been systematic, intentional and habitual for many years, and assessment less than 60%, even after equalization.

C. W. Wright, practicing attorney, and ex-Tax Collector, and ex-Clerk of the County Court for many years, and familiar with assessments, testifies to the custom of property owners to list at from 30 to less than 60% of actual value, and to intentional, habitual, uniform and systematic assessment at such rates, and that said percentages are never increased to a greater per cent. by County Board.

426 G. W. Hord, a farmer and owner and manager of farm lands in Taylor County, and familiar with assessments, testifies to similar custom to list at from 40 to 60%, as did C. W. Wright.

W. G. Gilpin, farmer in Taylor County, makes similar affidavit to that of G. W. Hord.

Edward Hill, a merchant in Taylor County, makes similar affidavit to that of Gilpin.

J. H. Miller, a fertilizer dealer in Taylor County, makes similar affidavit to that of Edward Hill, and fixes the ratio of assessed to true value at 60% or less.

Frank Bowles, a farmer in Taylor County, makes similar affidavit, and fixes ratio at 60% or less.

When the foregoing affidavits, read to the Board of Valuation & Assessment by the Louisville & Nashville Railroad Company, were introduced before the said Board—being read in the court under stipulation between complainant and defendants in this case—the Hon. James Garnett, the Attorney General, said that the fact that neither Green nor Taylor County had a Sheriff, or anyone authorized to collect taxes for County purposes, large judgments having been rendered against the Counties and the Fiscal Court required by mandamus to levy a large tax for the purpose of paying the judgments, was sufficient evidence to show that such Counties should not be considered for the purpose for which the affidavits were filed; and in support of his contention he attached the affidavits of J. W. Cloyd, ex-County Judge, Henry R. Turner, Cashier of a bank, T. W. Buchanan, a merchant, W. I. Meader, Clerk of the Circuit Court, G. D. Smith, J. R. Saunders, County Attorney, and the affidavits of Elliott Graham, County Judge, J. McV. Shreve, County Clerk,

W. H. Milby, County Attorney, L. E. McGinnis, Collector of
427 State Taxes, and leading citizens.

He said that after eliminating Green and Taylor Counties, the assessments of the remaining twenty-one counties, the assessment as reported by the officers, equalized and supervised, amounted to $133,225,118.00, while the total assessment of all the counties

amounted to $852,171,205.00, which he thought showed that the Assessors of the twenty-one Counties aforesaid had not systematically, habitually or intentionally assessed the property at not exceeding 60% of its real value, but if they did so, the Board of Valuation & Assessment had no power to cure the evil complained of.

He read Sec. 182 of the State Constitution; cited Louisville Railway Co. v. Commonwealth, 105 Ky. 710, Bells Gap Railroad Co. v. Pennsylvania, 134 U. S. 239; and State Railroad Tax Cases, 92 U. S. 575; and Ky. Constitution, Sec's 171 and 172.

Also the Attorney General filed affidavits of the Sheriff and County Judge of Adair County, of the County Clerk, Assessor and Sheriff of Boone County, of the Assessor, County Clerk and real estate agent of Boyle County, of the Sheriff and Assessor of Fayette County, of the Clerk of Kenton County, of the County Judge, Deputy County Clerk, Sheriff, Assessor and Chairman of the County Board of Equalization of Jefferson County, and of the County Clerk County Judge, Sheriff and Assessor of Lincoln County, of the Deputy Assessor, County Judge, the Clerk and the Sheriff of Nelson County, which he said showed that the property of their counties, respectively, was assessed at 80% of its real value.

He said that Adair, Boone, Fayette, Kenton, Nelson, Lincoln, Boyle and Jefferson Counties reported an assessment aggre-
428 gating $308,069,386.00, and that such affidavits showed that over one-third of the assessed value of the State was assessed at at least 80% of real value.

He therefore contended that the State Board should be convinced that the property in the State, assessed, supervised and equalized, was assessed at at least 80% of real value, which he said was the per cent. used by the Board in valu-ing stocks of Banks and trust companies.

The affidavits of Cloyd, Turner, Buchana, Meader, Smith and Anders stated that they were acquainted with values of real estate in Taylor County, and with the assessment thereof as fixed by the Board of Equalization, and that real estate in the County was assessed at from 60 to 90% of its value; that Taylor County was laboring under a bonded debt of over $300,000.00 (about 7% of total assessment for the County), which tended to demoralize real estate values; "that, in fact, real estate in this County has no fixed value, and will not have so long as its burden of indebtedness is so great;" that, at a very recent sale, a piece of property known as the Dooley property, and assessed for taxation at $1,000.00, sold at the court house door on a credit of six months at $1,000.00.

The affidavit of Elliott Graham, County Judge, and acquainted with values, stated that on September 1, 1912, and for many years previously, there existed against Green County a judgment on old railroad bonds in the Federal Court for over $275,000.00; "that by reason of said judgments the property values in said county is greatly depreciated in value, and is of comparatively low value when compared with the property values of counties neighboring said Green County; that owing to said judgment said County has been

unable to have a Sheriff for many years, and that at the
429 present time there are against the said County mandamus proceedings instituted by said bond-holders, which makes it impossible to get anyone to serve as Collector of the County Revenue, and that at the present time said County has no such Collector; that by reason of these judgments and mandamus proceedings against the said County the property values are very low, and comparatively all the sales of land in said County are made to residents of the County, very few persons coming into the County for the purpose of investing in property in said County; that said conditions have a strong tendency to stagnate business and drive capital from said county. He says that by reason of the foregoing conditions he considers and verily believes that the property of Green County, on September 1, 1912, was assessed at a reasonable per cent. of its fair cash value * * * under said conditions."

J. McV. Shreve made affidavit similar to that of Graham, and so likewise did W. F. Milby, L. E. McGinnis and Ellis Workman.

A. D. Patteson, Sheriff of Adair County, acquainted with the people and property of that County, believes that such people generally endeavor to list their property at what they consider its fair cash value, and that the Sheriff endeavored to assess it at what he believed was such value, and that the County Board endeavored to require it equalized at what they considered its fair cash value, and at not less than 80% of its real value; and he was of opinion that the property of the County had been assessed and equalized at not less than 80% of its real value.

N. H. Moss, the County Judge of Adair County, made exactly similar affidavit, and so did W. R. Rogers, County Court Clerk of Boone County, and B. B. Hume, Sheriff of Boone County.

D. F. Logan, Assessor for Boyle County, and reasonably
430 well acquainted with its people, and reasonably well informed on property values and assessment, said that it was the intention of the Assessor to assess real and personal property, other than notes, bonds and the like, at 80% of its fair cash value, and of the Board of Equalization to equalize at same ratio, but that he was informed that notes and bonds which were good were assessed at par, and that for about the past three years, where there had been a sale of real estate, that in the first assessment period thereof it had been the custom to assess for taxation at 80% of the sale price, and that prior to said period of about three years it was the custom in the county to assess real estate which had been sold, at the sale price thereof, and for taxes to be paid thereon at the sale price thereof at the period for assessment and taxation next subsequent to said sales, and that, as he was informed, thereafter the valuation of real estate so sold and so taxed at the first period next after sale, was customarily by the Board of Equalization of the County equalized with other real estate in the neighborhood or other real estate in the neighborhood equalized to it.

J. B. Nichols, Clerk of the County Court of Boyle County, made similar affidavit, and so did N. K. Tunis, a real estate and insurance agent of Boyle County.

D. W. Scott, Sheriff of Fayette County, and familiar with the value of property in said County subject to taxation, stated that he believed that in said County property was assessed at 80% of its cash value.

Thomas Bradley, Assessor for Fayette County, said that he was "familiar with values of property in said county subject to taxation, and that same is assessed for purposes of taxation at a value equal to the price the same would bring at a fair, voluntary sale.
431 The affiant further says that in all cases where the consideration is contained in a deed for real estate, the same is assessed for purposes of taxation at an amount equal to 80% of said consideration."

John B. Dillon, Clerk of Kenton County, and familiar with values, whose duties required him to make and deliver to the Assessor the list of transfers of real estate in his County for the last four years, and acquainted with the values and the true consideration expressed in deeds, said that from this source and other information he was convinced and believed that all property in Kenton County was generally assessed at 80% of its real value; that the Assessor, for 1913 and next preceding years, assessed property at not less than 80% of the fair cash value, and that the Board of Supervisors required it to be assessed at not less than 80%.

Muir Weissinger, County Judge of Jefferson County, and had become necessarily acquainted with property in Louisville and Jefferson County and its values, believed that the citizens of Louisville and Jefferson County generally had endeavored to list their property at what they considered at least 80% of its fair cash value, and that the Board of Supervisors of the County had endeavored to equalize it for at least 80% of such value; and he was of opinion that the property assessed in the County had been assessed for at least 80% of its real value.

P. S. Ray, Clerk of the Jefferson County Court, made similar affidavit to that of Weissinger.

A. M. Emler, Sheriff, made similar affidavit to that of Weissinger.

Edward A. Barry, County Assessor, made similar affidavit to that of Weissinger.

G. B. Cadper, County Court Clerk of Lincoln County,
432 said that he believed that real property that had been transferred in his County in the last four years, had been universally listed at 80% of its fair cash value, and that the Assessor had endeavored to assess such transfers at 80% of it value, and that the Board of Equalization had endeavored to assess all property which had been transferred at 80% of its value. He said that all personal property, such as money and notes, was listed at real value; that banks were listed on capital and surplus at 80% of book value; and that it was impossible to arrive at the value of property otherwise than it having been transferred within the last four or five years.

James P. Dailey, County Judge of Lincoln County, and ac-

quainted with its people and values, made affidavit identical with that of G. B. Cadper.

W. L. McCarty, Sheriff of Lincoln County, made affidavit identical with that of Dailey.

John C. Peppler, Assessor of Lincoln County, made affidavit identical with that of McCarty.

Hubert Hinkle, Deputy Sheriff of Nelson County, acquainted with property in his county and its value, says, in making assessments, it was his purpose to require the property owners to list at fair cash value, and that he endeavored to and did assess at fair cash value, and believes that the assessment for the year 1913, as supervised and equalized, was not less than 80% of the fair cash value of the property so assessed.

F. Boone Rapier, County Judge of Nelson County, and acquainted with its people, made affidavit identical with that of Hubert Hinkle.

W. J. Roby, Deputy County Court Clerk of Nelson County, made affidavit identical with that of Rapier.

433 R. L. Hagan, Sheriff of Nelson County, made affidavit identical with that of Roby.

434 Complainant also read the affidavits, on the subject of ratio of assessed to real value, which were introduced pursuant to item 11 of the stipulation of May 4, 1914.

The following witnesses made affidavit—read by stipulation as their depositions respectively—in effect as follows: That they resided in the respective Counties, were acquainted with the location and value of real estate, including farm lands and town lots, and familiar with the practice of assessing property for State and County taxation in the County, and that it had been for years the custom in the County to list and assess for taxation in the County personal property and real estate, including farm lands and town lots, at not exceeding the per cent. named by the witness, of the fair cash value of the property, estimated at the price it would bring at a fair voluntary sale; and that the assessments were intentionally, habitually and uniformly made at such rates, and that the percentages were not, during the period named, exceeded after action of the County Board of Equalizers with respect to the lands and town lots, so that the assessments finally made by the County authorities did not exceed the per cent. of assessed to real value named by the witness:

John D. Winn, trader and ex-circuit court Clerk, Estill County, ratio not exceeding 60%.

R. M. Garrett, ex-sheriff and farmer, Estill County ratio not exceeding 55%.

Jesse Lunsford, Magistrate, Estill County, ratio not exceeding 60%.

Charles M. Lee, Clerk of County Court and of Board of Supervisors, Fleming County, ratio not exceeding 60%.

S. J. Collins, ex-Deputy Assessor of Fleming County, ratio not exceeding 60%.

435 G. S. Webb, ex-sheriff and trader, Clark County, ratio not exceeding 60%.

Robert Childers, ex-deputy sheriff, Clark County, ratio not exceeding 55%.

James M. Gauge, farmer, Clark County, ratio not exceeding 55%.

C. H. Beasley, lawyer, Clark County, ratio not exceeding 55%.

J. F. Beagle, Circuit Court Clerk, Clark County, ratio not exceeding 50%.

James P. Webb, ex-sheriff and farmer, Clark County, ratio not exceeding 55%.

M. L. Meers, President of Bank, Larue County, ratio not exceeding 60%.

T. J. Nicely, sheriff and tax collector, Rockcastle County, ratio not exceeding 60%.

G. S. Griffin, Deputy Sheriff and farmer, Rockcastle County, ratio not exceeding 60%.

J. R. Gossett, ex-deputy sheriff, Simpson County, for eight years, and ex-sheriff two years, with fair knowledge of values, is of opinion that farming lands as assessed by Assessor and Board of Supervisors, after equalization, for 1913, does not exceed one-fourth to one-third of salable value, and that lands as estimated are nearly $100,000.00 less than for 1912.

E. S. Broaddus, County Judge, M. S. Harris, Bank Cashier, and J. M. Covington, Vice-President, Meguiar Bank & Trust Co., all of Simpson County, and all having fair knowledge of values and of assessed valuation for 1913 and some years previous, regard that farm lands did not pay taxes for 1913 on more than from one-third to one-half of salable value, and real estate owners in the City
436 of Franklin from 50 to 60% ratio.

T. H. Hudson, Sheriff of Breathitt County, says it has been the rule and custom in his county to list personalty and real estate at 60% ratio; that the assessments were intentionally, habitually, uniformly and systematically made at that rate, and did not exceed 60% after equalization.

Daniel Turner, of Breathitt County, made similar affidavit.

G. B. Hutchings, liveryman and farmer of Logan County, and acquainted with values in said county, testifies to the custom for years to list real and personal property at 60%, and that the assessments were intentionally, habitually and uniformly made *and* such rate, and did not exceed 60%.

Sommers Deane, a farmer of the same county, made similar affidavit.

W. A. Dockins, a tobacco buyer and ex-farmer of same county, made similar affidavit.

Ed. Johnson, a hardware dealer and ex-farmer, of same county, makes similar affidavit.

W. N. Short, a farmer of same county, makes similar affidavit, except he fixes ratio at 30%.

D. E. Bell, McLean County, makes similar affidavit, except he fixes ratio at 35%.

John R. Priest, County Court Clerk of McLean County, makes similar affidavit, except he fixes ratio at 30%.

C. E. Beeler, Sheriff of McLean County, makes similar affidavit, except he fixes ratio at 35%.

J. C. Stokes, Deputy City Marshall, of Muhlenberg County, fixes ratio in his county at not exceeding 60%.

H. C. Hudson, ex-assessor of Oldham County, fixes ratio in his county at not exceeding 60%.

437 W. D. Pinkston, Clerk of the County Court of Oldham County and ex-Assessor, fixes the ratio at 80% the first year after transfer, and not exceeding 60% at other times, in his County.

D. H. French, lawyer in Oldham County, fixes ratio in that County at not exceeding 60%.

R. D. Bruce, Deputy Sheriff, Boyle County, says that real estate as a whole in that County was not assessed at more than 60%, Sept. 1, 1912, and for many years prior thereto, and that much of the best land in the County is assessed at less.

D. O. C. Daugherty, a newspaper reporter in Daviess County, and familiar with assessments, says that it has been the custom in said County to list personalty and realty at 60%, and that the assessments are intentionally, habitually, uniformly and systematically made at that rate, and not exceeded by the Board of Equalization.

Wm. Conley, attorney and County Judge of Nicholas County, and well acquainted with values in that County, makes similar affidavit, except that he fixes the ratio at not exceeding 50% after equalization.

W. E. Darragh County Attorney of Nicholas County, makes same affidavit to that of Conley.

Jas. Mitchell, ex-sheriff and farmer of Nicholas County, makes similar affidavit.

John F. Sugg, ex-county court clerk of Nicholas County, makes similar affidavit.

E. J. Secrest, farmer and Assessor of Nicholas County, makes similar affidavit.

P. S. Ray, Clerk of the Jefferson County Court, makes the following affidavit:

"I, P. S. Ray, Clerk of the County Court of Jefferson
438 County, Kentucky, do hereby certify that the records of this office show that during the year commencing September 1, 1912, and ending August 31, 1913, there were 10,308 transfers of real estate made in Jefferson County, Kentucky, and recorded in my office, and that in only 3.55% of the said transfers was shown what purported to be the real consideration, a nominal consideration only being shown in all others.

I do further certify that the attached instrument of writing contains a list of 63 of these transfers with the consideration paid therefor and the assessed value of same as shown by the Assessor's books for the year 1913, and in each instance the assessed value as compared with the corresponding transfer value is sixty per cent. or less.

Witness my hand this 18th day of December, 1913."

List mentioned by Ray not copied because unnecessary.

John Buechel, Assessor of the City of Louisville, Jefferson County, Kentucky, made the following affidavit:

"The affiant, John Buechel, states that he is the duly elected Assessor of the City of Louisville, Kentucky, and has held such office

during the years 1910, 1911, 1912 and 1913, and that he was re-elected by the General Council on the 14th day of November, 1913, for the succeeding four years.

Affiant further states that when he first assumed the office of City Assessor he found that the state and national banks and trust companies of said city of Louisville, Ky., were being assessed for franchise taxation on an equalized basis of sixty per cent. of their total value, and he also states that the equalized assessments of the aforesaid corporations for each of the years 1910, 1911, 1912, 1913 and 1914, based on their reports as of September 1st of the respective preceding years were all made on a sixty per cent basis, although he had endeavored in 1910 and again in 1913 to have said assessments raised to an eighty per cent basis, but that in each instance the City Board of Equalization had reduced, over his protest, his tentative assessments, which had been made on an eighty per cent. basis, to a sixty per cent. basis.

Affiant further states that the method pursued in arriving at the assessments of the aforesaid state and national banks and trust companies for each of the years aforesaid, was as follows:

To the par value of the capital stock of each of said banks and trust companies was added its surplus and undivided profits, if any, thus arriving at the total value of each of the said banks and trust companies respectively; then these total values so ascertained were equalized or reduced to a sixty per cent. basis, and then from these several equalized values were deducted the assessed values of the tangible property, if any, of each bank or trust company respectively, the several remainders being treated as the equalized
439 assessed values of their respective franchises.

Affiant further states that the aggregate value of the several state and national banks and trust companies of the City of Louisville, Kentucky, as of September 1, 1913, arrived at by adding the surplus and undivided profits to the par value of the capital stock thereof, was..... $15,795,545.00

and that this amount was equalized at sixty per cent., producing the sum of..... 9,447,327.00

from which latter amount was deducted the aggregate assessed value of their tangible property, amounting to 1,104,025.00

leaving the sum of..... $8,373,302.00

as the aggregate of the equalized assessments of the franchises of the several state and national banks and trust companies of the City of Louisville, Kentucky, as of the fiscal year stated.

And affiant further states that the aggregate value of the several state and national banks and trust companies of the City of Louisville, Kentucky, as of September 1, 1912, was arrived at by the same method, and that the amount so ascertained was likewise equalized at sixty per cent., and from the result so obtained was deducted the aggregate assessed value of their tangible property, leaving the sum of 48,092,808.00 as the aggregate of the equalized assessments of the franchises of the several State and National banks and trust com-

panies of the City of Louisville, Kentucky, as of the fiscal year stated.

Affiant further states that $1.76 on each $100.00 was the City tax rate for the year 1913, and that the same rate has been decided upon for the year 1914."

440 Complainant, pursuant to item No. 11 of the stipulation filed May 4, 1914, permitting the introduction of the affidavits to be read by the Chesapeake & Ohio Ry. Co., and the Cincinnati, New Orleans & Texas Pacific Ry. Co. read the following affidavits introduced by the Chesapeake & Ohio Ry. Co., the Cincinnati, New Orleans & Texas Pacific Ry. Co. not having introduced any affidavits; the affidavits introduced being as follows:

J. T. Stokely, for four years within a period of ten years Assessor of Taxes for Clark County, and Deputy Sheriff of said County, and being a real estate agent by profession and familiar with values of real estate by reason of twenty years' experience, and familiar with the method of assessment of real estate for many years in said County, deposed that although assessments on various pieces of land vary somewhat, nevertheless, as an general rule the average value placed upon real property in said County for assessment did not, and for many years last paid had not, exceeded 60 per cent of real value, and in many instances the assessed did not exceed 50 per cent of real value.

R. J. Colbert for several years Deputy Clerk of the Fayette Circuit Court, and at another time Master Commissioner of said Court, and by reason of his experience familiar with the books and records of the Court and of the County Assessor, deposed that he had examined records of said Court to obtain a description of the various tracts of land sold by the Master Commissioner of said Court under judgments of Court during 1908 and subsequent years, and had examined the Tax Assessor's books and ascertained the assessed valuation thereof and found the result as follows:

A tract of 15 3/5 acres sold in 1908 for $1950, was assessed for 1908, 1909, 1910, 1911 and 1912 at $1,000 each year, and ratio of assessed to real value 51.28 per cent.

441 A tract of 15 acres sold in 1909 for $2,010, was assessed for 1909 at $1,400, 1909 at $1,000, 1910 at $1,600, 1911 at $1,500, 1912 at $1,500, and ratio 74.62 per cent.

A tract of 375.45 acres sold in 1909 for $27,783.30, was assessed for 1909, 1910, and 1911 and 1912 at $22,440, and ratio was 80 per cent.

A tract of 8 acres sold in 1909 for $1,105, was assessed for 1909 at $500, 1910 at $500, 1911 at $600, and ratio was 54.3 per cent.

A tract of 50 acres sold in 1909 for $5,505.05, was assessed for 1909 at $2,500, 1910 at $1,400, 1911 at $1,400, 1912 at $2,500, and ratio for 1912 was 45.41 per cent.

Two tracts of land aggregating 80 acres sold in 1909 for $4,010.10, was assessed for 1909, 1910, 1911 and 1912 for $2,000, and ratio was 49.87 per cent for 1912.

A tract of 1 acre sold in 1909 for $675, was assessed for 1909, 1910, 1911 and 1912 at $400 a year, and ratio was 59.27 per cent for 1912.

A tract of 131 acres sold in 1909 for $2,758, was assessed for 1909 at $1,200, 1910, 1911 and 1912 at $1,965, and ratio for 1912 was 71.35 per cent.

A tract of about 39 acres sold in 1909 for $8,657, was assessed for 1909 and 1910 at $6,000, 1911 at $6,500, and ratio for 1911 was 75 per cent.

A tract of about 12 acres sold in 1910 for $270 per acre or $3,274.94, was assessed included in a 200 acre tract for 1910, 1911 and 1912 at $100. per acre, and ratio for 1912 was 37.03 per cent.

A tract of 75 acres sold in 1910 for $2,999, and was assessed for 1910 and 1911 at $2,200 and 1912 at $2,400, and ratio for 1912 was 80 per cent.

A tract of 106 acres sold in 1910 for $1,087.22, was assessed for 1910 at $6,000, 1911 at $8,050, and 1912 $6,000, and ratio for 1912 was 59.49 per cent.

442 A tract of 41½ acres sold in 1910 for $4,859.65, was assessed for 1910 at $2,000, 1911 at $3,200, and 1912 at $2,600, and ratio was 53.5 per cent.

A tract of 101 acres sold in 1910 for $14,467.13, was assessed for 1910, 1911 and 1912 at $6,500, and ratio for 1912 was 44.93 per cent.

A tract of 3 acres sold in 1911 for $1,700, was assessed for 1911 at $500, 1912 at $1,300, and ratio for 1912 was 76.47.

A tract of 82 acres sold in 1911 at $125 per acre, was assessed as part of 290 acres for 1911 and 1912 at $54.31 per acre, and ratio for 1912 was 43.44 per cent.

A tract of 6 acres sold in 1911 for $3,025, was assessed for 1911 and 1912 at $1,500, and ratio for 1912 was 49.58 per cent.

A tract of 5 acres sold in 1912 for $1,570, was assessed for 1911 and 1912 at $800, and ratio for 1912 was 59.55 per cent.

A tract of 47.7 acres sold in 1912 for $4,750.92, was assessed for 1911 and 1912 at $3,760, and ratio for 1912 was 79.16 per cent.

A tract of about 22 acres sold in 1912 for $3,630.82, was assessed for 1912 at $1,500, and ratio for 1912 was 41.32 per cent; the ratios aforesaid for 1912 ranging from 37.03 per cent to 80 per cent, averaging 59 per cent; that the list aforesaid covered all sales by the Master from June 8, 1908 to Nov. 11, 1912, except a tract the assessment whereof could not be identified; and deponent regarded the sales detailed as representative of the public sales of the County; that he was unable to make a similar list of private sales because the deeds did not generally show the real consideration.

J. W. Wheeler, a member for three or four years of the Clark County Board of Equalization, and familiar with values of land in said County, and particularly in Winchester, and familiar with the method of assessment, deposed that real property was and had been for many years last past assessed at not exceeding 60 per cent of real value.

John A. Judy, Master Commissioner of Montgomery Circuit Court for ten years last past, and well acquainted with values of real estate in said County, and with the method of assessment, having

443 sold real estate in all parts of said County, deposed concerning sale values when accessible as follows: that 14.26 acres

sold in 1909 for $1,675, was assessed in 1909 at $420, 1910 at $1,150, 1911 at $600, and 1912 at $560, the vendible value of said land having been continuously virtually the same.

That 482 acres was assessed in 1909 at $21,360, that 199.6 acres thereof sold at an undisclosed price, and in 1910 the remaining 295 acres was assessed at $13,275; that in 1910 106.56 acres of the residue was sold at $9,590.40, and in 1911 the remaining 189 acres was assessed at $8,505 and in 1912 at $8,500; that in 1911 the 106.56 acres was assessed as 98 acres at $4,365; that the owner assessed in 1912 160 acres (including 60 acre tract) at $6,900.

That the purchaser of the 199 acres listed it at $12,250 in 1910, and in the same year sold 97 acres, which was assessed to the purchaser at $6,790, and in 1912 said 97 acres was assessed at $4,500; that the remaining 100 acres was assessed in 1911 at $5,250 and in 1912 by a purchaser at $6,440, the first year after the sale, and that the supervisors followed their custom in increasing the valuation; that in 1910 100 acres sold for $11,800, and 37¼ acres for $4,200 aggregating $16,000, and said 137 acres was assessed for 1911 at $6,330, and in 1912 at $5,930; that about 124 acres sold in 1909 for $14,900, and was assessed in 1911 and 1912 at $6,200;

That in 1910 about 123 acres sold for $15,325, and was assessed in 1911 at $5,490, and 118 acres of it was assessed in 1912 at $4,400; that it was the custom of the Board of Supervisors, as affiant understood it, to assess property transferred at from 70 per cent to 80 per cent of the purchase price for the single year following the sale, and thereafter at its previous valuation; that the entire real estate in Montgomery County was assessed at an average ratio of about 50 per cent vendible value.

Lewis Apperson, well acquainted with vendible values of land in Montgomery County, and with the manner of assessment for
444 fifteen years having examined assessor's books and deed books recently for ratio assessed to real value in the last few years, and deposed that 134 acres sold in 1912 at $114 per acre, and was assessed in 1911 at $7,070, and in 1912 at $6,500.

That 700 acres sold at public sale in 1912 and 206 acres thereof was sold for $24,795, in 1911 was assessed at $9,000, 1912 at $10,200; 260 acres thereof sold at $15,600, was assessed in 1911 and 1912 at $4,890; that 240 acres thereof sold for $27,588, and was assessed in 1911 and 1912 at $10,050; that 50 acres sold for $950, and was assessed in 1911 and 1912 at $150; that 150 acres sold for $30,000, and was assessed in 1911 at $11,370 and in 1912 at $11,340; that a tract sold in 1910 for $15,000, was assessed in 1910 for $4,460, in 1911 at $9,925 and in 1912 at $5,000; that the real consideration was rarely stated in voluntary deeds.

A tract for which the owner has been offered $200 per acre has been assessed for several years at $56 per acre—tract located.

A tract of 234 acres in said County in 1906 was bought at $22,396.52 and the assessor, the purchaser, assessed it as 230 acres at $17,770, and in 1908 as 230 acres at $9,200, and in 1906 at $8,625, 1910 at $8,875, 1911 and 1912 at $9,325; that it is the custom for the assessor of said County and of the Board of Supervisors to assess

real property at about 70 per cent of the price for which it may have been sold immediately before assessment, and for subsequent years to reduce the assessment to what it was before sale; that deponent knows of no instance where farm property has ever been assessed at exceeding 70 per cent of its fair cash value, and only at such ratio in years immediately after sale wherein the deed would show the purchase price.

C. W. Tipton, farmer and formerly Deputy Sheriff for Bath County for about two years, assisting on tax books and in tax collections during such time, and familiar with values in real estate in Bath County, deposed that the assessed value thereof did not exceed 50 per cent to 60 per cent of fair market value.

L. J. Barber, an ex-member of County Board of Equaliza-
445 tion and familiar with value of real estate in Bath County, and the assessed value thereof, deposed that real estate in said County was assessed at about 50 per cent of its fair cash value to the best of his knowledge.

James P. Coliver, ex-member of said County Board, and familiar with real and assessed value of real estate in said County, deposed that such real estate was assessed at about 50 per cent of its fair market value.

Butler Toy, resident for sixty-five years of Bath County, and ex-magistrate for eight years, and ex-member of County Board of Equalization and familiar with values, deposed that real estate in Bath County was not assessed for more than 50 per cent of real value; and that while serving on said Board it was understood that the Board would equalize land on a 50 per cent basis.

T. A. Day, ex-City Marshal of Morehead, in Rowan County, for six or eight years, and ex-Deputy Sheriff of said county, and having held other offices, and familiar with real estate values in Morehead, and with various property owners in his County, deposed on personal knowledge that the custom among property owners of the County had been during many years to list their property, as a general thing, at not exceeding 60 per cent of real value; that as Deputy Sheriff he was familiar with property assessment, and that it was the custom in the County to assess real estate at less than the market value by almost every property owner, and had been the custom of said County Board of Equalization for many years to assess at about 60 per cent of real value, and that this was true of 1912.

W. T. Caudill, Deputy Sheriff incumbent of Rowan County for eight or ten years last past, and for years Clerk of the County Court of Valuation and familiar with its workings, and with assessment rules of his County and with the values generally throughout the county, deposed to present and former practice of assessing officers to assess real estate at about 50 per cent or 60 per cent of real value; also, speaking from his knowledge gained as Deputy Sheriff and County Clerk the property owners customarily returned the property for assessment at not exceeding 50 per cent of real value,
445½ which was also true of 1912; that speaking from deeds in his office as Deputy Clerk and transfers of some of the most valuable real estate in the County and City, he instances land sold

in 1912 at $3,500, assessed for said year at $2,000; land sold for $2,000 in said year and assessed same year for $1,200; land sold in 1912 at $2,500 and assessed same year at $800, and assessment raised by County Board to $900; and that many other lesser properties were assessed at from 50 per cent to 60 per cent of real values as appeared by conveyances.

A. J. McKinzie, incumbent Deputy Sheriff of Rowan County, ex-Assessor for three years, and acquainted with the values, deposed the real estate was assessed and assessment approved by Board at about 50 percent of real value, and not raised by Board to exceed 60 percent.

S. M. Wylie, for fifteen years more or less engaged in preparing tax books for County and ex-Revenue Agent and Deputy Circuit Clerk, and familiar with values for many years, deposed to assessment at ratio not exceeding 60 percent of real value, and at same ratio for 1912.

Ed. S. Hughes, Clerk Boyd County Court for three years and custodian of deed books and assessor's books, and familiar with values, deposed the practice of assessing real estate in the County generally about 60 percent of the fair market value, and same for 1912.

W. M. Salisbury, extensive buyer and seller of real estate for 10 years, and had served as supervisor of taxes, familiar with the values and manner of assessment, deposed to the practice of assessing real estate generally at 30 percent of fair market value, and same for 1912.

S. C. Howland, County Clerk of Greenup County for four years, and familiar with values, deposed to assessing farm property at not exceeding 50 percent to 60 percent as a general rule of real value, and mentions the case of land sold for $8,000 three years previously, assessed for $3,000 for 1912.

S. T. Bailey, for four years Sheriff of Greenup County, and previously Deputy for four years, and familiar with the values, deposed to the assessment of property in this County at not over 60 percent to 70 percent of market value, and to the Board's rule to try to hold property up at assessed value in previous years,
446 although real estate had recently increased in value.

J. W. Collins, ex-Sheriff Greenup County for four years, and Deputy for four years, made similar affidavit to that of S. T. Bailey.

A. P. McCoy, once County Treasurer of Greenup County, and on different occasions on County Board of Equalization and Town Board, and familiar with values, deposes to assessment at ratio from 50 to 60 percent of the fair market value, and as applicable also to 1912.

A. H. Parker, former Master Commissioner of Lewis County, deposed to assessment at about 60 percent of the fair market value, and that no land was assessed at full value.

W. H. Rice, County Judge of Mason County, and previously member of Fiscal Court for eight years, and familiar with values,

deposed to assessment of real estate approximately 62½ percent of the market value.

J. F. Barbour, President of Bank at Maysville, Mason County, for sixteen years, deposed that assessed value of 1912 and several prior years had not exceeded 70 percent of the market value as he believed.

J. E. Threlkeld, Banker Mason County, made similar affidavit to that of J. F. Barbour.

W. Holton Key, real estate dealer of Mason County, made similar affidavit to that of J. F. Barbour.

David Boggs, County Judge of Lawrence County, and former Justice of the Peace for many years, deposed to the general practice of assessment at about 50 percent of the market value of real estate in said County, applicable also to 1912.

T. S. Thompson, County Attorney for Lawrence County for four years and County Judge for four years, made similar affidavit to that of David Boggs.

J. W. Yates, Deputy Sheriff of Lawrence County for five years, and ex-Supervisor of assessments, made similar affidavit to that of David Boggs.

Mont Holt, County Clerk for seven years of Lawrence County, and Clerk of Fiscal Court, made similar affidavit to that of David Boggs.

447 E. F. Howes, County Clerk of Johnson County for two terms, and since then real estate dealer and acquainted with values, deposed to his judgment that the average market value of land, including improvements and excluding town lots, was, Sept. 1, 1911, $12 per acre.

Henry Ward, Sheriff of Johnson County, and property owner, and familiar with values, gives similar affidavit to that of E. F. Howes, except he fixes $10 instead of $12 per acre.

Jas. W. Turner, Bank Cashier of Johnson County, and familiar with values, deposed that outside of town lots, real estate was assessed at about 60 percent of real value, and that such is true of 1912 assessment.

D. J. Wheeler, Master Commissioner and ex-member of Board of Supervisors of Johnson County, deposed to the same facts as Jas. W. Turner.

Samuel Stapleton, for four years County Attorney of Johnson County, deposed to the same facts as Jas. W. Turner.

Paul C. Hager, land owner and Clerk of County Court of Johnson County, deposed to same facts as Jas. W. Turner.

Lee May, Sheriff of Floyd County, and acquainted with values, deposed that lands were usually listed at about 60 percent of selling price.

J. N. Harris, Clerk of County Court of Floyd County, deposed to the same facts as Lee May.

B. P. Friend, Master Commissioner of Floyd County, deposed to same facts as Lee May.

R. E. Stanley, formerly County Judge of Floyd County, deposed to same facts as Lee May.

G. P. Archer, Bank Cashier for forty years of Floyd County, and familiar with values, deposed to same facts as Lee May.

H. H. Fitzpatrick, merchant and for many years Clerk of Circuit Court of Floyd County, deposed to same facts as Lee May.

Jas. Salisbury, twenty years a resident of Floyd County, deposed to same facts as Lee May.

S. P. Davidson, a merchant of Floyd County, deposed to same facts as Lee May.

Malone Hall, County Judge of Floyd County, deposed to same facts as Lee May.

448 Among the affidavits showing the ratio of assessed value and true value are the affidavits based upon a manifestation of the fair cash value of real estate by the amount of United States Internal Revenue Stamps appended to the conveyances of such real estate; such affidavits are in form as follows:

"STATE OF KENTUCKY,
—— *County, sct:*

Affiant, —— —— says that he is Clerk of the —— County Court, State of Kentucky, and has been such clerk for — years, and has been a resident of said county for — years; that affiant, as such clerk, is the custodian of the books in which all deeds in said county are recorded and also of the assessor's books for said county; that he has had an examination made of all deeds recorded in his said office from December 1, 1914 to date, which are required to be stamped by the Act of October 22, 1914, of the Congress of the United States and in which the consideration appears to be more than $1,000.00 and also of the assessed value of the real estate embraced in said deed for the year 1915, and has prepared a statement of all such conveyances and assessed value (except in a few instances where it was impossible to ascertain how a particular piece of property has been assessed); that said statement shows the date of the conveyance, the name of the first grantor, the name of the first grantee, the consideration for the conveyance and the assessed value of said property for the year 1915, made as of September 1, 1914; that the considerations shown in said statement were obtained as follows: the cash consideration was placed at $500.00 for every fifty cents worth of United States Internal Revenue Stamps appended to said deed, and to this was added the amount of any deferred payment secured by lien or other encumbrance, and where the tract conveyed was assessed as part of a larger tract, the statement shows, as nearly as can be estimated, the proportion of the total assessment made on account of the tract conveyed; that the total considerations so obtained for all deeds examined and contained in said statement amount to $—; that the total assessed values as of September 1, 1914, for taxes for the year 1915, of the properties embraced in said deeds amount to $—; that the ratio of assessed value to real consideration (obtained as above stated) is —%, and that, in the judgment of affiant this is the average ratio of assessed real value to all property in said county. The said statement is as follows, towit:"

Such affidavits were made by the following persons showing the consideration for the conveyances made in his county, as appeared by such Revenue Stamps and the assessed valuation of the land conveyed. The affiants, except when shown otherwise, are the Clerks of the County Courts, who are the recorders of their respective counties.

449 Theodore Lewis, Fayette County, swears aggregate consideration for land conveyed in his county $1,785,260.80, which was assessed $869,296.00, ratio 48.6%.

Keller Greene, Montgomery County, consideration $122,886, assessed $58,906.00, ratio 47.92%.

Leslie Shrout, Bath County, consideration $12,681.00, assessed $47,616.00, ratio 47.616%.

W. T. Caudill, Rowan County, consideration $26,318.80, assessed $11,792.00, ratio 45%.

J. F. McDavitt, Carter County, consideration $17,504.08, assessed $3,800.00, ratio uncertain because of church exemption.

Ed. S. Hughes, Boyd County, consideration $142,870.00, assessed $59,012.—, ratio 41%.

Charles A. Atkinson, Johnson County, consideration $34,610.00, assessed $18,950.00, ratio 54 plus.

M. A. Hay, Lawrence County, consideration $5,615.00, assessed $3,000.00, ratio 40.75%.

D. P. Fannion, Lewis County, consideration $34,510.00, assessed $18,550.00, ratio 53%.

Thos. W. Cummins, Bracken County, $119,224.77, assessed $46,051.00, ratio 38 plus.

Chris Milius, Campbell County, consideration $900,820.08, assessed $541,000, ratio 60%.

C. O. Johnson, Ballard County, consideration $272,654.02, assessed $81,515.00, ratio 29%.

R. L. Gresham, Caldwell County, consideration $43,702.00, assessed $25,960.00, ratio 59.4%.

R. O. Willingham, Jr., Carlisle County, consideration $18,031.65, assessed $7,536.50, ratio 42%.

L. E. Guess, Crittenden County, consideration $36,205.00, assessed $20,930.00, ratio 58%.

O. L. Mason, Graves County, $170,141.23, assessed $91,730.00, ratio 53.9%.

450 W. W. Mauzey, Grayson County, consideration $33,025.00, assessed $12,175.00, ratio 36.86%.

J. L. Irwin, Hardin County, consideration $74,895.87, assessed $32,558.00, ratio 43.4%.

Otis A. Benton, Henderson County, consideration $181,069, assessed $97,644.00, ratio 54%.

P. J. Vaughan, Hickman County, consideration $49,498.50, assessed value $24,115, ratio 41 plus.

R. W. Creal, Larue County consideration $40,620.95, assessed $18,975.00, ratio indeterminate because $3,000 consideration listed with other property.

D. S. Webb, Livingston County, consideration $36,935.00, assessed $24,855.00, ratio 67 plus.

U. S. King, Lyon County, consideration $19,454.00, assessed $11,525.00, ratio 59.2%.

John D. Hall, Marshall County, consideration $49,464.14 assessed $11,340, ratio 36 plus.

J. L. Fentress, Muhlenberg County consideration $248,685.57 assessed $55,530.00, ratio indeterminate because $22,449.82 not listed.

W. C. Blankenship, Ohio County, $44,200.00, assessed $26,375.00, ratio 59.67%.

John Bingham, Union County, $137,544.83, assessed $66,680.33, ratio 41.2%.

T. F. Hinton, Allen County, consideration $62,193.40, assessed $26,075.00, ratio about 42%.

J. A. Murray, Barren County, consideration $52,574.00, assessed $23,695.00, ratio 47%.

W. W. Points, Bell County, $54,754.07, assessed $25,175, ratio 46%.

Pearce Paton, Bourbon County, consideration $522,510.94, assessed $287,845, ratio 55.09%.

451 Alfred Russell, Breathitt County, consideration (as expressed in deeds but, apparently, not by Stamps) $28,750.00, assessed $13,050.00, ratio 45.39%.

Lindsay Ridgway, Bullitt County, consideration $100,952, assessed value $56,556.00, ratio 56 plus.

William Deatherage, Carroll County, consideration $715,541.00, assessed value $67,802.00, ratio 56%.

(Geo. B. Winslow swears that a tract included in the above estimate assessed at $4980.00 where the consideration showed $3000.00 was worth from $7500.00 to $8500.00).

L. J. Harris, Christian County, consideration $162,968.40 assessed $81,395.00, ratio 49.945%.

(This affidavit shows many other deeds where the consideration is indeterminate).

J. E. Alexander, Estill County, consideration $12,201, assessed $6654.00, ratio .545%.

A. P. Plummer, Fleming County, consideration $378,765.74 assessed $169,787.00, ratio 44.8%.

(In conveyances showing $6325.00 consideration there are no assessed figures).

Crawford Lee, Franklin County, consideration $257,481.70, assessed $138,683.00, ratio 52.85%.

J. K. Nesbit, Gallatin County, consideration $56,419.68, assessed $26,809.00, ratio 47%.

J. W. Howard, Harlan County, consideration, $928,384.97 assessed value $373,462.80, ratio 40 plus.

(Additional considerations aggregating $10,101.00 and $26,925.00 are so uncertain as to consideration or assessment as to make them of no value, so that the deeds are not included in the above).

E. E. Biggs, Hart County, consideration $30,135.50, assessed value $11,335.00 ratio 37 plus.

452 W. R. S. Curle, Harrison County, consideration $326,737, assessed $137,040.00, (with five pieces not assessed) ratio 49%. (The five pieces not assessed aggregate $42,500.00).

S. T. Douthitt, Henry County, consideration $242,681.80, assessed $100,699.00, ratio 41 5%.

P. S. Ray, Jefferson County, consideration $2,742,665, assessed $1,719,655.00, ratio —.

R. B. Bentley, Letcher County, consideration $90,689.90, assessed $21,755.00, ratio —.

(Ten pieces aggregating $37,843.80 contained in the foregoing consideration not assessed in the county.

J. L. Harrison, Laurel County, $22,250.36, assessed $11,550.00, ratio 57%.

George C. Russell, Logan County, consideration $107,908.35, assessed $43,625.00, ratio 40.4%.

R. B. Terrill, Madison County, consideration $304,694.17, assessed $171,030.00, ratio 55.8 plus.

J. R. Priest, McLean County, consideration $88,882, assessed $34,-028.00, ratio 38.31%.

Morgan Gilkey, Nelson County, consideration $192,368.00, assessed $100,470.00, ratio 52.228%.

John F. Sugg, (ex-assessor), Nicholas County, consideration $215,033.78, assessed $81,535.00, ratio 37.9%.

B. P. Combs, Perry County, consideration $411,659.94, assessed $218,379.05, ratio 53 plus. (Of the foregoing property consideration whereof is $77,607.00 appears not to have been assessed).

J. S. Boone, Powell County, consideration $3500.00, assessed $2300.00, ratio 65-5/7%.

W. V. Dudley, Pendleton County, consideration $98,645.40, assessed $41,210.00, ratio 42.7%.

(Amounts not assessed $19,469.31).

453 S. F. Bowman, Rockcastle County, consideration $15,-650.00, assessed $9850.00, ratio 57%.

Luther Black, Shelby County, consideration $799,753.00, assessed $300,123, ratio 49.905%.

George B. Schindler, Spencer County, consideration $176,278.00, assessed $91,930.00, ratio 52.15%.

A. S. Crowdes, Simpson County, consideration $72,023.47, assessed $34,563.00, ratio 50%.

C. W. Ramsey, Taylor County, consideration $63,235.00, assessed value $23,925.00, ratio 38%.

C. E. Gill, Todd County, consideration $65,507.87, assessed $33,-210.00, ratio 50.69%.

E. C. Smith, Warren County, consideration $255,409.50, assessed $155,401.00, ratio 60.8%.

J. A. Wycoff, Washington County, $59,888.35, assessed $26,-895.00, ratio 44.9%.

L. D. Stone, Webster County, consideration $63,897.23, assessed $26,070.00, ratio 40.8%.

E. F. White, Whitley County, consideration $21,656.00, assessed $10,500.00, ratio 50 minus.

John M. Gray, Woodford County, consideration $273,934.88, assessed $143,362.00, ratio 52.33%.

W. C. Smith, Wolfe County, consideration $5100.00 ("where same property has been assessed"), assessed $2250.00 ("Where same has been assessed"), ratio 44-2/17%.

(Details show $3550.00 not assessed and $1100.00 assessed at $650.00; $1500.00 assessed at $1000.00; and $1200.00 assessed at $600.00).

The records of Pike County do not show the Revenue Stamps appended to deeds.

Jos. D. Harkins (citizen) Floyd County, consideration $36,500.00, assessed $15,426.00, ratio 42.263%, regarded by affiant as the average ratio; but he excepts a few instances where impossible to
454 ascertain assessed value and of railroad where consideration involves incidental damages.

In Mason County the records do not show Revenue Stamps.

In Daviess County the same is true.

In Fulton County the same is true.

In Trigg County the same is true.

C. H. Noggle, citizen, Green County, consideration $13,829.00, assessed $6380.00, but consideration apparently so confused and all property not listed as to make affidavit of little value.

Robert C. Porter, Lee County, consideration $17,100, assessed $8800.00, ratio 51.4 plus.

Lee A. Scearce, Marion County, consideration $79,263, assessed $36,658.00, ratio 46%; (affiant is a real estate agent and thinks 50% about the real ratio).

455 The defendants offered the following evidence:

(*a*) From proceedings of State Board of Equalization of Kentucky, Session 1904, p. 12, as follows:

"This Board has previously called attention to the oversight in the law creating the said board, whereby Section 7 was allowed to remain a part of the statute. We desire again to emphasize the fact that this section is rendered absolutely void, both by the Constitution which allows no discretion to the lawmakers in the matter but makes it mandatory that all property shall be listed at its fair cash value, and by other sections of the Revenue Law assessors are not only authorized to accept lists of property at other than a fair cash value, but must, before entering upon the discharge of their duties take the following oath; "I do swear that I will administer to every person listing property of every description the oath prescribed by law, and fix the value of all property to be listed by me at its fair cash value estimated at the price it would bring at a fair voluntary sale."

We again urge upon all assessors the duty of reading carefully all the provisions of the new Revenue Law and familiarizing themselves with their duties under it. * * * (p. 13). When it happens, as it often does, that a County Board of Supervisors allows a rich section of the county to list its property at less than it should be, there is nothing left for this board except to raise the whole county * * * (p. 14). We desire also to call attention to the

injustice practiced in some of the counties of the State of listing the lands and lots sold during the year at a valuation out of any proportion to the valuation fixed upon other lands and lots in the same county. The price which real estate in a community brings upon the market affords a very fine index to the correct valuation of property in that locality, and should greatly aid the assessor and supervisors in arriving at a fair valuation, not only of the property transferred, but of other property similarly situated. It is manifestly unjust, however, to require the owner of real estate which has been sold during the year to list it at its full cash value and at the same time allow his neighbors with property equally valuable to escape with valuations grossly out of proportion."

From the report of the Auditor of the State of Kentucky for the year 1904, p. 206, under the Statement 9, showing assessments of railroads in Kentucky returned to the Auditor by the Railroad Commission for the year 1904;

"Mileage of the Illinois Central Railroad 553.64. Valuation of the physical property $11,546,060.00."

From page 462 of the same report;

"Valuation of the franchise for taxation for the year 1904, $4,188,225.00."

(*b*) From the Report of Tax Commission of Kentucky, and Advisory Commission, dated Dec. 18, 1909, a report to the Governor, responsive to a request from him:

The Commission summing up the complaint of and defects in the system of taxation in Kentucky, recite (p. 3):

456 "Second. It unjustly places an undue portion of the public burden on some classes of property, and especially upon real estate, while permitting other classes of property entirely to escape taxation."

Also from p. 19 under heading "Burden Falls on Farmer", the following:

"An analysis of the State assessments reveals the fact that 53 per cent of the property listed for taxation is in the agricultural parts of the State. Farm lands alone constitute 45 per cent. of the total assessment. Farms, livestock, farming implements and like property constitute over 7 per cent. of the total, and if we add to those two items even a small percentage of all other personalty assessed in rural counties, much of which must belong to the farmers, we get this startling result: That under our uniform ad valorem system in practice, at least 53 per cent. of the direct tax for State purposes collected from assessments comes from farm property, while only about 6 per cent. comes from money, stocks, bonds, etc., in the hands of other people. In this respect the experience of Kentucky is not exceptional. Every State has met with a similar result in attempting to collect a heavy ad valorem direct tax on this class of property."

Also from p. 22 under the heading "Fails to Produce Revenue", the following:

"Men will not submit to a tax rate which they consider unfair.

When the tax rate becomes so high that under-valuation begins, an increase in the tax rate does not proportionately increase the revenue.

Our present tax laws in Kentucky are fairly well enforced. We have succeeded much better than many States in the matter of assessments, but we have not devised, nor has any State been able to devise, any plan that has been able to bring out the millions of dollars of personal property for assessment under the general property tax system. To reach this property it is necessary to adopt different methods, which are not possible under our Constitution as it now reads."

(c) Also from the Report of the Auditor of Kentucky for 1904-1905, p. IV, as follows:

"If the burden of taxation is not equal under the present law it is not in my opinion so much the fault of the law as it is the fault of those charged with the execution of the law and those whose patriotic duty it is to obey its commands.

If those charged with the assessments of property were as careful in listing it as their duties require them to be there would — less property escape taxation than does, and greater equality and fairer valuations would obtain."

From the proceedings of the State Board of Equalization of Kentucky, Session of 1904, p. 81, Table No. 1;

"Grand total of all property as assessed for taxation $630,795,464.00;

Grand total of all property equalized for taxation $636,744,205.;

Total amount for taxation $3,183,721.02."

457 Defendants introduced in evidence the affidavit of A. B. Jones, Clerk in the State Auditor's office, showing that the complainant had been assessed on its tangible property and franchise for the years from 1904 to 1911, both inclusive, as follows:

	Assessed value. Tangible.	Assessed value. Franchise.	Total.
1904	$11,546,060	$4,188,225	$15,734,285
1905	11,546,060	4,429,120	15,975,180
1906	11,580,233	4,432,240	16,012,473
1907	11,681,093	4,432,240	16,113,333
1908	11,612,348	4,437,440	16,049,788
1909	11,550,883	4,429,680	15,980,563
1910	12,315,858	4,228,425	16,544,283
1911	12,333,673	4,510,320	16,843,993

Defendants also introduced and read in evidence the affidavits referred to in the stipulation filed May 4, 1914, in these cases, being seventy-four in number, (twenty additional affidavits, similiar in character & contents were filed but not read) and enumerated in said stipulation, being the affidavits of ex-Assessors of the Counties enumerated, beginning with the affidavit of Rufus Williams, and ending with that of E. Cassity, which affidavits were in form as follows, to-wit:

"STATE OF KENTUCKY,
County of ——:

The affiant, —— ——, says that he was the duly elected, qualified and acting assessor of —— County, Kentucky, during the years 1910, 1911, 1912 and 1913; that in assessing property for taxation in said County for said years, affiant endeavored to follow the law and assess all property at its fair cash value, estimated at the price it would bring at a fair voluntary sale, and if any property
458 in said county was assessed at less than such fair cash value, it was unintentional on the part of the officers in the County whose duty it was to assess property for taxation.

Affiant says that he never at any time entered into any agreement or understanding with any other officer in the State whose duty it was to assess property for taxation, or anyone else, that property should be assessed at less than its fair cash value, estimated at the price it would bring at a fair voluntary sale, and that he never heard of any such understanding or agreement; and further, he says that no property was ever intentionally assessed by him for less than such fair cash value, and if he so assessed any property, it was on account of mistake for lack of proper evidence as to its value."

The defendants read from the cross-examination of George W. Lamb, in the testimony given by him at the hearing before the Board of Valuation & Assessment for the State of Kentucky, when said Board was considering or hearing proof as to the value of the franchise of the L. & N. Railroad Co. for the year 1913, as follows:

The witness was asked if the capital stock of the Cumberland Pipe Line Co. was $1,000,000.00, and the highest bid for the stock was $70.00 per share for that year, what would be the total value of the capital stock of said company when ascertained according to the stock and bond plan; and he answered that the total value of the capital stock on that basis would be $700,000.00, and that 80% thereof would be $560,000.00, and when from this sum was deducted $361,924.00, the value of the tangible property, the value of the franchise of that company would be $198,076.00.

Counsel for the State of Kentucky stated to the witness
459 that the report of the Cumberland Pipe Line Co., made to the Auditor of Public Accounts as of June 30, 1913, showed the said Company had undivided profits of $145,854.29, and the value of all of their assets was $122,742.08, and that said report also showed that the company had an indebtedness of $38,638.97, and that its gross earnings for that year were $201,827.94 and that its expenses were $94,688.11, which left a net income of $107,139.83. He was then asked if, considering all those factors, he believed the stock of that company was worth exceeding $70.00 per share. The witness would not express an opinion as to the value of the company's stock. The witness was asked if it was not a fact that this company was engaged in the business of piping oil, and if that business was not a hazardous business in view of the fact that oil wells were often exhausted and the pipe line has no value for other purposes. The witness stated he did not know. The witness stated that in ascertaining

the value of the capital stock of this company, that he had capitalized the net earnings of the company at 6%, and that he did not regard the nature of the business the corporation was engaged in, and by that process found the total valuation of the assets of the company to be $1,780,000.00; that he did not know the amount of dividend the company paid on its stock, and that he made no examination of any financial authorities to ascertain the amount of dividend it paid for that year. The witness stated the total assessment against the company for the year 1913 was $600,000.00.

In reference to the assessment made by the Board against the Pullman Co. for the year 1913, the witness was asked if it was not a fact that the memoranda referred to, made by the Board, if he did not find in the jacket containing the report of the Pullman
460 Co. four memorandums, made in pencil, on four yellow slips of paper, marked 1, 2, 3 and 4, and if in making his calculations, he did not adopt valuation No. 2, which gave the largest amount of the value of the franchise of any of the calculations contained in the jacket. He answered that he did not; and in qualifying that statement he said the stock and bond plan on sheet 3 was figured at $105.00 per share, and that he had applied the market quotation of $161.00 per share, adopting the plan as indicated by sheet 3 of the Board memoranda. He said that he did not adopt either or such part of the calculations made by the Board that would bring the desired result; that the plan he followed in making his calculations was to apply the stock and bond plan where he could get that information. He stated that it was a fact that one of the calculations made by the Board showed a total valuation of the property of that Company in Kentucky to be $972,000.00. This result was using a valuation of $105.00 per share; that 80% of that sum gave the result of $777,600.00, which was within $177,000.00 of the assessment fixed by the Board against the Pullman Company for the year 1913.

461 From Bulletin No. 21, 1905, Department of Commerce and Labor, Bureau of Census, Commercial Valuation of Railway Operating Property in the United States, 1904, page 7 of Article by Prof. Henry C. Adams:

"The value of terminal properties, ferries, bridges, and the like used but not owned by railway corporations is included in the valuation of railway property already submitted. On the other hand property owned by railway corporations but not used in the business of transportation is excluded from the value of railway property as given above, even though such property is the source of a net income to the railway. Both the inclusion and the exclusion result, however, from the method adopted and not from a scrutiny of the property."

From "Table 1, p. 8, showing the Commercial value of Railway Property Devoted to Transportation in the several States and Territories as of June 30, 1904."

Heading, "Commercial value of Railway Operating Property as of June 30, 1904" of the several States, for Kentucky $155,772,000—

Percent of Total for United States, 1.385—Rank of State 23—number of miles of single track, 3,250—average value per mile $47,900."

From page 9,

"The meaning of the figures submitted becomes clear when it is remembered that this valuation was made for the Bureau of Census, as one step in the determination of the wealth of the nation. It stands for that portion of the wealth employed in the business of transportation by rail. This being the case, those to whom the task of making this valuation was assigned were obliged to adopt a method that would disclose as nearly as possible the true cash or market value of the property. No other conception of value would be warranted, when the object of the valuation is to determine the current wealth of the nation."

Also from page 9, under "Method of Valuation," and under heading "Income to be Capitalized," the following:

"Inasmuch as the value to be obtained is the commercial value of property used in transportation by rail, it is evident that the income to be capitalized should be confined to operating income. Fortunately, this phrase has a definite meaning in railway accounting, and the deviations in practice from the established rules respecting operating income are not sufficiently numerous to cast reasonable doubt upon the gross figures annually reported to the Interstate Commerce Commission."

"It should be especially borne in mind that the income of railway corporations from investments in property not used in the business of transportation should be excluded from the sum to be capitalized. The reason for this is that to include such income would result in *in* a duplication of value when the Bureau of the Census combines the values here submitted with an appraisal of general property, for the purpose of arriving at the aggregate wealth of the nation. A hotel, for example, may be owned by a railway corporation and the income arising from its management may be included in the
462 railway's income account. But inasmuch as the hotel is subject to local appraisal as distinct from railway appraisal by the laws of most of the states, the income arising therefrom cannot be taken into consideration in the valuation of railway property."

Also from page 12, under "Distribution of Value," the following:

"The use to be made by the Bureau of the Census of the valuation of railway property here submitted requires the distribution of this value to the several states and territories. This distribution must, of course, be made by arbitrary rule, and a great deal depends upon the nature of the rule adopted. An exhaustive discussion of this general question will be found — the third paper appearing in the Supplement, contributed by Professor Meyer. By referring to this discussion it will be observed that ten different methods are suggested for the assignment of railway values to the states. These are as follows:

1. Single-track mileage basis.
2. All-tracks mileage basis.
3. On the basis of the funded debt and other obligations.
4. On the basis of station population.

5. Car-mileage basis.
6. On the basis of the original cost of construction.
7. On the basis of the density of traffic.
8. The gross-earnings basis.
9. The net-earnings basis.
10. On the basis of the cost of reproduction.

An exhaustive study of these methods led to the conclusion that the gross-earnings basis would result in the most accurate assignment of the value of railway property possible.

Also from page 14, Table 2, as follows:

"Kentucky, Commercial, as of June 30, 1904.....	$155,772,000
Latest reported as assessed for purposes of taxation, Jan. 1, 1904.....	$77,658,040
Ratio of assessed to commercial (per cent).....	49.9

Add matter covered by Item 12 of Præcipe or stipulation.

463 It is stipulated between complainant and the defendants that the foregoing is a complete bill of evidence, and is made up in accordance with the præcipe stipulated between complainant and defendants by their respective Counsel this the 28th day of June, A. D. 1916.

EDMUND F. TRABUE,
Of Counsel for Complainant and Appellant.
M. M. LOGAN,
Counsel for Appellees and Cross-Complainant.

Approved June 28, 1916.
A. M. J. COCHRAN, *Judge.*

464 Exhibit 1 with affidavit of William L. Tarbett referred to in Bill of Evidence is as follows, to-wit:

1st Case—#731.

1911 Return and Data.

1912 Assessment.

Correct Methods of Fixing the Value of the "Capital Stock" of 564 Miles of Railroad Operated by I. C. R. R. Co. in Kentucky.

Income Method.

System Net that can properly be capitalized:

1907	$16,545,108
1908	13,419,391
1909	13,464,357
1910	12,787,921
1911	15,698,182
Average	14,382,992

	Capitalized @ 6%.	Capitalized @ 7%.	Capitalized @ 8%.
	$239,716,533	$205,471,314	$179,787,400
Ky. Mileage prorate....	12.3%	12.3%	12.3%
	29,485,134	25,272,972	22,113,850
a/c Excess Outside Ky..	61%	61%	61%
	17,985,932	15,416,513	13,489,449
a/c Equalization.....	60%	60%	60%
	10,791,559	9,249,908	8,093,669
Deduct Tangible.....	12,381,773	12,381,773	12,381,773

Exhibit 2 with affidavit of William B. Tarbett referred to in Bill of Evidence is as follows:

Not copied same being Exhibit in case #769.

465 Exhibit Tarbett 3 referred to in Bill of Evidence is as follows, to-wit:

1st Case No. 731.
1911 Return and Data.
1912 Assessment.

Stock and Bond Method.

Market value at average quotations of all Stock and Bonds Outstanding, not in Company's Treasury, and excluding investments in securities of the L. N. O. & T. Railway.....		$296,249,519
Less cost or book value of stocks, bonds, cash notes, advances, and miscellaneous property not used for railroad purposes, located outside the State and having their situs outside the State of Kentucky.....		50,559,000
Balance to prorate		245,690,519
Kentucky mileage prorate		12.3%
		30,219,934
61% a/c Excess Value outside Kentucky.....		61%
		18,434,160
Equalize to 60%		60%
		11,060,496
Tangible		12,381,773

Capital Stock:

Illinois Central R. R. Co. Capital Stock	.....
Chicago, St. Louis & New Orleans R. R. Co. Capital Stock	.....
Dubuque & Sioux City R. R. Co. Capital Stock	.....
	.....

Funded Debt:	Amount outstanding at close of year.
Sterling 6% extended as 4% of 1951	$2,500,000
Sterling 5% of 1905 extended as gold 3½%	1,000,000
Gold 4% of 1951	1,500,000
Gold 3½% of 1951	2,499,000
Sterling 3% of 1951	2,500,000
Sterling 5%, extended as gold 3½% of 1951	3,000,000
Currency Kankakee & Southwestern R. R. 5% of 1921	968,000
Sterling 3½% of 1950	5,265,000
Gold 4% of 1952	15,000,000
Gold Cairo Bridge 4% of 1950	3,000,000
Gold 4% of 1953	25,000,000
Gold Western Lines 4% of 1951	5,425,000
Gold St. Louis Division 3% of 1951	4,998,000
Gold St. Louis Division 3½% of 1951	8,377,000
Gold Louisville Division 3½% of 1953	23,888,000
Gold Springfield Division 3½% of 1951	2,000,000
Gold Omaha Division 3% of 1951	5,000,000
Gold Litchfield Division 3% of 1951	3,235,000
Gold Purchased Lines 3½% of 1952	12,000,000
Gold Refunding 4% of 1955	30,940,000
Belleville & Carondelet R. R. Co. 6% of 1923	470,000
Carbondale & Shawneetown R. R. Co. 4% of 1932	241,000
St. Louis Southern R R. Co. 4% of 1931	538,000
St. Louis Southern R. R. Co. Income 6% of 1931	6,000
First Lien Equipment 4%	28,000,000
D. & S. C. R. R.—Iowa Falls & Sioux City 7% of 1917	2,800,000
" Cherokee & Dakota 5% of 1935	3,100,000
" Cedar Rapids & Chicago 5% of 1935	830,000
C. St. L. & N. O. R. R.—5% of 1951	16,635,000
" 3% of 1951	1,359,000
" Memphis Division 4% of 1950	3,500,000
" Cairo Bridge 5% of 1950	3,000,000
	218,575,000

Total Stock and Funded Debt .....

cluding Amounts Held in Company's Treasury, as of June 30th, 1911, Based on the th, 1911, as Reported by the Commercial and Financial Chronicle.

Amount not held in treasury.	Market value. Highest quotation.	Market value. Average quotation.	Value of amount not held in treasury based on highest quotation.	Value of amount not held in treasury based on average quotation.
$109,288,800	142⅜	134.3	$155,599,929	$146,774,858
9,989,800	97	93.7	9,690,106	9,360,443
33,300	...	.....	(Nominal)	(Nominal)
119,311,900	...	.....	165,290,035	156,135,301

Net amount not held in treasury.	Market value. Highest quotation.	Market value. Average quotation.	Value of amount not held in treasury based on highest quotation.	Value of amount not held in treasury based on average quotation.
$2,500,000	99¼	98.1	$2,478,125	$2,452,500
1,000,000	88½	87.2	885,000	872,000
1,500,000	103	101.8	1,545,000	1,527,000
2,499,000	92	90.	2,299,080	2 249,100
2,500,000	75¾	75.4	1,893,750	1,885,000
3,000,000	88½	88.2	2,655,000	2,646,000
968,000	104	102.4	1,006,720	991,232
5,266,000	88½	87.2	4 660,410	4,591,952
15,000,000	99½	98.9	14,925,000	14,835,000
3 000,000	97½	96.75	2,925,000	2,902,500
.....	...	.....	.....	.....
5,425,000	96⅜	95.6	5,228,344	5,186,300
4,998,000	75½	75.5	3,773 490	3,773,490
8 377,000	87¼	86.5	7,298,461	7,246,105
21,788,000	86¾	85.6	18,901,090	18,650,528
2,000,000	89¾	86.6	1,795,000	1,732,000
5,000,000	76¼	75.8	3 806,250	3,790,000
3 148,000	75¾	74.8	2,384,610	2,354,704
12,000,000	87	86.5	10,440,000	10,380,000
30,940,000	99	97.25	30,630,600	30,089,150
470,000	117¾	113.5	553,425	533,450
241,000	95¼	95.25	229,553	229,553
538,000	96	92.8	516,480	499,264
6,000	...	.....	(Nominal)	(Nominal)
.....	...	.....	.....	.....
2,800,000	114	114.	3,192,000	3,192,000
.....	...	.....	.....	.....
.....	...	.....	.....	.....
11,289,000	117	116.	13,208,130	13,095,240
1,359,000	85¼	85.	1,158,547	1,155,150
3,500,000	93	93.	3,255,000	3,255,000
.....	...	.....	.....	.....
151,112,000	...	.....	141,644,065	140,114,218
.....	...	.....	306,934,100	296,249,519

Exhibit Tarbett #4 referred to in Bill of Evidence is as follows, to-wit:

Not copied same being Exhibit in case #769.

Exhibit Tarbett 5 referred to in Bill of Evidence is as follows, to-wit:

466 The letter referred to of W. L. Tarbet, in his testimony, as received from the State Auditor's Office, is as follows:

State of Kentucky.

Office of Public Accounts.

FRANKFORT, November 18, 1912.

Hon. Wm. L. Tarbet, Land and Tax Commissioner, I. C. R. R. Co., Chicago, Ill.

DEAR SIR: Responding to yours of the 16th., I take pleasure in giving you the information called for.

1900.

Total value of lands	$251,850,226.00
Total value of town lots	197,550,431.00
Implements and machinery	10,503,439.00
Live stock	36,513,119.00

1910.

Total value of lands	$341,895,099.00
Total value of town lots	286,110,991.00
Implements and machinery	12,214,470.00
Live stock	45,444,744.00

I think this is what you want. You did not mention town lots and in case this is not desired same may be deducted. By buildings I suppose you meant the improvements which are included in "Lands."

Hope this will be satisfactory.

Yours very truly,

G. B. LIKENS,
Assistant Auditor."

467 Exhibit Blauvelt 1 referred to in Bill of Evidence is as follows, to-wit:

Not copied same being copied in case #769.

Exhibit Blauvelt 2 referred to in Bill of Evidence is as follows, to-wit:

(Here follows Tabular Statement, marked page 468.)

469 Exhibit Blauvelt 3 referred to in Bill of Evidence is as follows, to-wit:

470 **Illinois Central Railroad Company System.**

Statement Showing the Operating Income, Gross Operating Income, and Net Income from Operation of the Entire Line of the Illinois Central Railroad for Each of the Fiscal Years Ending June 30th, 1908, to June 30th, 1912, Both Dates Included.

	1912	1911	1910	1909	1908
Operating Income	7,812,718.60	14,393,048.90	12,004,673.79	12,945,934.86	12,742,868.09
Other Income:					
Rents accrued from lease of road	.....	3,084.09	15,438.50	15,143.51	7,420.24
Hire of equipment—balance	.....	510,650.73	.....	.....	.....
Other rents—joint facilities	1,172,849.35	1,194,723.12	1,256,016.46	1,097,905.35	1,014,078.05
Other rents—miscellaneous	94.18	62.96	3,738.25	162,697.12	145,813.16
Miscellaneous income—real estate revenue	187,446.12	127,763.10	138,064.74	.....	.....
" " —other items	1,178.60	569.25	23,968.92	81,160.17	72,679.82
Total Other Income	1,361,568.25	1,836,853.25	1,437,226.87	1,356,906.15	1,239,991.27
Gross Operating Income	9,174,286.85	16,229,902.15	13,441,900.66	14,302,841.01	13,982,859.36
Deductions from Income:					
Hire of equipment—balance	154,893.65	.....	45,361.28	183,554.42	36,846.89
Other rents—joint facilities	593,822.72	524,702.42	588,300.98	638,246.31	522,563.32
Miscellaneous rents	8,761.83	7,017.61	20,317.26	16,683.59	4,058.09
Total Deductions	757,478.20	531,720.03	653,979.52	838,484.32	563,468.30
Net Income from Operation	8,416,808.65	15,698,182.12	12,787,921.14	13,464,356.69	13,419,391.06

THIS PAGE BOUND

471 The part of affidavit of George W. Lamb referred to in Plaintiff's stipulation and in Bill of Evidence is as follows, to-wit. Heretofore copied. See Page —.

472 The parts of Census Bulleton 21 Commercial Valuation of Railway operating property in the United States: 1904 referred to and embraced in the foregoing Bill of Evidence are as follows, to-wit:

473 On July 12, 1916, the following order was made and entered herein, to-wit:

No. 731.

ILLINOIS CENTRAL RAILROAD COMPANY
vs.
HENRY M. BOSWORTH et al. and ROBERT L. GREENE et al., Their Successors.

This day came the defendants, cross appellants herein, by M. M. Logan and John L. Rich, their attorneys and filed herein and presented to the court their petition for cross appeal and their assignment of errors intended to be urged by them, praying also, that a transcript of the record and proceedings and papers upon which the decree herein was rendered, duly authenticated, be sent to the Supreme Court of the United States, and that such other and further proceedings may be had as may be proper in the premises.

On consideration whereof, the court does allow the cross appeal upon the defendants giving bond according to law, in the sum of $1,000.00.

Came the defendants by its attorneys, and presented to the court a bond on cross appeal herein, and same is approved by the court and ordered filed and the cross appeal allowed.

Petition for cross appeal and assignment of errors filed by the foregoing order is as follows, to-wit:

474 Filed Jul- 12, 1916. J. W. Menzies, U. S. Clerk.

District Court of the United States for the Eastern District of Kentucky.

No. 731.

ILLINOIS CENTRAL RAILROAD COMPANY, Appellant,
v.
ROBERT L. GREENE and Others, Appellees.

Petition for Cross-appeal.

The defendants, Robert L. Greene, Auditor, Sherman Goodpaster, Treasurer, James P. Lewis, Secretary of State, constituting the Board of Valuation and Assessment for the State of Kentucky, M. M. Logan, Attorney General of the State of Kentucky, Charles H. Morris, First Assistant Attorney General, O. S. Hogan,

Second Assistant Attorney General, D. O. Myatt, Third Assistant Attorney General, Thomas M. Jones, Assistant Auditor, Victor A. Bradley, Commonwealth's Attorney for the Franklin Circuit Court and W. C. Marshall, County Attorney of Franklin County, conceiving themselves aggrieved by the decree entered in this suit on the 28th day of June, 1916, do hereby appeal from the said
475 decree to the Supreme Court of the United States, and pray that their appeal may be allowed and that a transcript of the record and proceedings and papers upon which said decree was made, duly authenticated, may be sent to the Supreme Court of the United States, and they assign for error—

1. The action of the court in overruling defendants' motion to dismiss on the grounds that the district court had no jurisdiction to hear this cause.

2. The action of the court in overruling defendants' motion to dismiss on the grounds that the bill of complaint shows no equity on its face.

3. The action of the court in overruling defendants' motion to dismiss on the grounds that plaintiff has an adequate remedy at law.

4. The action of the court in overruling defendants' motion to dismiss on the grounds that the bill states no cause of action against the defendants or either of them under the laws of this State or under the laws of the United States.

5. The action of the court in overruling defendants' motion to dismiss on the grounds that this is a suit against the State of Kentucky.

6. The action of the court in holding in the decree that plaintiff's property should not be assessed at more than 60 per cent of its fair cash value estimated at the price it would bring at
476 a fair voluntary sale for the supposed reason or for the reason that other property in the State, or a great bulk of the other property in the State, is habitually, wilfully, intentionally and systematically assessed at not more than 60 per cent of its fair cash value estimated at the price it would bring at a fair voluntary sale.

7. The action of the court in holding that other property in the State, or a great bulk of other property in the State, is habitually, intentionally and systematically assessed at not more than 60 per cent of its fair cash value estimated at the price it would bring at a fair voluntary sale.

8. The action of the court in holding that the Board of Valuation and Assessment followed a fundamentally wrong method in assessing plaintiff's property for taxation.

9. The action of the court in granting a decree enjoining the collection of taxes by the State of Kentucky and the county and taxing districts in the State, based upon an assessment greater than 60 per cent of the fair cash value of plaintiff's property estimated at the price it would bring at a fair voluntary sale.

10. The action of the court in holding any part of the assessment made by the Board of Valuation and Assessment of plaintiff's property void, and in granting a decree enjoining the col-

lection of any part of the taxes due based upon an assess-
477 ment of plaintiff's property at the sum of $27,124,240.

Wherefore, the defendants pray that the decree of the District Court be reversed.

M. M. LOGAN,
Attorney General, Counsel for Defendants.

Appeal allowed as prayed for, bond in the penalty of $1000.00.

A. M. J. COCHRAN,
Judge of the District Court of the United States for the Sixth Circuit and the Eastern District of Kentucky.

478 The Bond on Cross Appeal filed and approved by the foregoing order is as follows, to-wit:

Filed Jul- 12, 1916. J. W. Menzies, U. S. Clerk.

District Court of the United States for the Eastern District of Kentucky.

No. 731.

ILLINOIS CENTRAL RAILROAD COMPANY, Appellant,
v.
ROBERT L. GREENE and Others, Appellees.

Bond.

Know all men by these presents, that we, Robert L. Greene, Auditor, Sherman Goodpaster, Treasurer, James P. Lewis, Secretary of State, M. M. Logan, Attorney General, Charles H. Morris, First Assistant Attorney General, O. S. Hogan, Second Assistant Attorney General, D. O. Myatt, Third Assistant Attorney General, Thomas M. Jones, Assistant Auditor, Victor A. Bradley, Commonwealth's Attorney for the Franklin Circuit Court, Wiley C. Marshall, County Attorney of Franklin County, as principals, and Robert L. Greene, Sherman Goodpaster, James P. Lewis and M. M. Logan, sureties, acknowledge ourselves to be jointly indebted to the Illinois Central Railroad Company, appellant in the above cause, in the sum of $1000.00, conditioned that whereas on the 28th day of June, 1916, in the United States District Court for the Eastern District of Kentucky, in a suit depending in that court wherein the
479 above mentioned principals were defendants and the Illinois Central Railroad Company was plaintiff, numbered on the equity docket as 731, a decree was rendered against the said above mentioned principals, and they having obtained a cross appeal to the Supreme Court of the United States and filed a copy thereof in the office of the clerk of the court to reverse the said decree, and a citation directed to the said Illinois Central Railroad Company citing and admonishing it to be and appear at a session of the Supreme Court of the United States to be holden in the City of Washington on the 10th day of August 1916 next. If the said above mentioned principals shall prosecute their appeal to effect

and answer all cost if they fail to make plea good then the above obligation to be void, else to remain in full force and virtue.

ROBERT L. GREENE, *Auditor.*
SHERMAN GOODPASTER, *Treasurer.*
JAMES P. LEWIS, *Secretary of State.*
M. M. LOGAN, *Attorney General.*
CHARLES H. MORRIS,
1st Ass't Att'y Gen'l.
O. S. HOGAN, *2nd Ass't Att'y Gen'l.*
D. O. MYATT, *3rd Ass't Att'y Gen'l.*
THOMAS M. JONES, *Assistant Auditor.*
VICTOR A. BRADLEY,
Commonwealth's Attorney for the Franklin Circuit Court.
WILEY C. MARSHALL,
County Attorney of Franklin County,
By M. M. LOGAN,
Attorney General, Counsel for Appellants.
M. M. LOGAN.
ROBT. L. GREENE.
SHERMAN GOODPASTER.
JAMES P. LEWIS.

480 UNITED STATES OF AMERICA,
Eastern District of Kentucky, ss:

I, John W. Menzies, Clerk of the District Court of the United States for the Eastern District of Kentucky, do hereby certify *that* the foregoing 479 pages to be a full, true and correct transcript of the record in the cause lately pending in the said Court wherein Illinois Central Railroad Company was complainant and H. M. Bosworth, Carl F. Crecelius and Thos. S. Rhea et al. were Defendants, in Equity No. 731, as required by the stipulation of counsel therein, and the præcipe of the parties removing the case, as the same appears on file and of record in my office.

In testimony whereof, I have hereunto set my hand as Clerk of the aforesaid Court, and affixed the seal thereto, at Frankfort, in said District, this the 19th day of August, A. D. 1916 and of the Independence the 141st year.

[Seal United States of America, Eastern K't'y Dist. Court.]

JOHN W. MENZIES,
Clerk, United States District Court,
Eastern District of Kentucky.
By CHAS. N. WIARD,
Deputy Clerk.

Endorsed on cover: File No. 25,472. E. Kentucky D. C. U. S. Term No. 642. Illinois Central Railroad Company, appellant, vs. Robert L. Greene, Auditor; Sherman Goodpaster, Treasurer; James P. Lewis, Secretary of State, constituting the Board of Valuation and Assessment for the State of Kentucky et al. File No. 25,473. Term No. 643. Robert L. Greene, Auditor et al., constituting The Board of Valuation and Assessment for the State of Kentucky et al., appellants, vs. Illinois Central Railroad Company. Filed August 31st, 1916. File Nos. 25,472 and 25,473.

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1916.

No. 644.

ILLINOIS CENTRAL RAILROAD COMPANY, APPELLANT,

vs.

ROBERT L. GREENE, AUDITOR; SHERMAN GOODPASTER, TREASURER; JAMES P. LEWIS, SECRETARY OF STATE, CONSTITUTING THE BOARD OF VALUATION AND ASSESSMENT FOR THE STATE OF KENTUCKY, ET AL.

No. 645.

ROBERT L. GREENE, AUDITOR, ET AL., CONSTITUTING THE BOARD OF VALUATION AND ASSESSMENT FOR THE STATE OF KENTUCKY, ET AL., APPELLANTS,

vs.

ILLINOIS CENTRAL RAILROAD COMPANY.

APPEALS FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF KENTUCKY.

FILED AUGUST 31, 1916.

(25,474)
(25,475)

(25,474)
(25,475)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1916.

No. 644.

ILLINOIS CENTRAL RAILROAD COMPANY, APPELLANT,

vs.

ROBERT L. GREENE, AUDITOR; SHERMAN GOODPASTER, TREASURER; JAMES P. LEWIS, SECRETARY OF STATE, CONSTITUTING THE BOARD OF VALUATION AND ASSESSMENT FOR THE STATE OF KENTUCKY, ET AL.

No. 645.

ROBERT L. GREENE, AUDITOR, ET AL., CONSTITUTING THE BOARD OF VALUATION AND ASSESSMENT FOR THE STATE OF KENTUCKY, ET AL., APPELLANTS,

vs.

ILLINOIS CENTRAL RAILROAD COMPANY.

APPEALS FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF KENTUCKY.

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1 United States District Court, Eastern District of Kentucky, Frankfort.

#769.

ILLINOIS CENTRAL RAILROAD COMPANY, Plaintiff,
vs.
HENRY M. BOSWORTH et al. and ROBERT L. GREENE et al., Their Representative Successors, Defendants.

Order Enlarging Time for Filing Transcript of Record on Appeal & Cross Appeal.

For satisfactory reasons appearing to the court to the time for filing the record in this cause in the Supreme Court of the United States, pursuant to the appeal and cross appeal sued out, is extended until the 27th day of August, 1916.

July 22, 1916.

A. M. J. COCHRAN,
United States District Judge.

Filed July 22, 1916. J. W. Menzies, U. S. Clerk.

2 Filed June 29, 1916. J. W. Menzies, U. S. Clerk.

Citation on Appeal.

No. 769.

UNITED STATES OF AMERICA:

The President of the United States to Robert L. Greene, Sherman Goodpaster, James P. Lewis, Thomas M. Jones, M. M. Logan, Charles H. Morris, O. S. Hogan, E. O. Myatt, Victor A. Bradley, and Wiley C. Marshall, Greeting:

You are hereby cited and admonished to be and appear at the Supreme Court of the United States, at Washington, within thirty (30) days from the date hereof, and pursuant to an appeal this day granted by the United States District Court for the Sixth Circuit and Eastern District of Kentucky, wherein the Illinois Central Railroad Company is complainant, and is now appellant, and you are defendants and now appellees, to show cause, if any there by, why the decree rendered against the said appellant, as aforesaid, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable Edward Douglass White, Chief Justice of the Supreme Court of the United States of America, this the

28th day of June, A. D. 1916, and of the Independence of the United States the one hundred and fortieth.

[Seal United States of America, Eastern Kty. Dist. Court.]

A. M. J. COCHRAN,
Judge of the District Court of the United States for the Sixth Circuit and Eastern District of Kentucky.

Copy of the within citation received this the 29th day of June, A. D. 1916.

M. M. LOGAN,
Council for Defendants.

3 Filed July 14, 1916. J. W. Menzies, U. S. Clerk.

Citation on Cross Appeal.

UNITED STATES OF AMERICA:

The President of the United States to the Illinois Central Railroad Company, Greeting:

You are hereby cited and admonished to be and appear at the Supreme Court of the United States at Washington within thirty days of the date hereof, and pursuant to a cross appeal this day granted by the United States District Court for the Sixth Circuit and the Eastern District of Kentucky, wherein the Illinois Central Railroad Company is plaintiff and now appellant and Robert L. Greene, Auditor, Sherman Goodpaster, Treasurer, James P. Lewis, Secretary of State, constituting the State Board of Valuation and Assessment, M. M. Logan, Attorney General of the State of Kentucky, Charles H. Morris, First Assistant Attorney General, O. S. Hogan, Second Assistant Attorney General, D. O. Myatt, Third Assistant Attorney General, Thomas M. Jones, Assistant Auditor, Victor A. Bradley, Commonwealth's Attorney of the Franklin Circuit Court and Wiley C. Marshall, County Attorney of Franklin County are defendants and now appellees, to show cause if any there be why the decree rendered against the said defendants, now appellees, and in favor of the plaintiff, now appellant, should not be reversed and corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Edward Douglass White, Chief Justice of the Supreme Court of the United States of America this the 12 day of July, A. D. 1916, and of the independence of the United States the one hundred and fortieth.

[Seal United States of America, Eastern Ky. Dist. Court.]

A. M. J. COCHRAN,
Judge of the District Court of the United States for the Sixth Circuit and the Eastern District of Kentucky.

Copy of within citation received this the 14th day of July, 1916.

EDMUND F. TRABUE,
Counsel for Appellee on Cross-Appeal.

4 Record of the Proceedings of the District Court of the United States for the Eastern District of Kentucky, in the Cause and Matter Hereinafter Stated, and the Same Being Disposed of at a Regular Term of said Court, Begun and Held in the City of Frankfort on the Second Monday in March, 1916, Being the 13th Day of said Month, and the Final Decree in said Cause Being Entered on the 28th Day of June, 1916.

Present: Hon. A. M. J. Cochran, United States District Judge.

#769.

ILLINOIS CENTRAL RAILROAD COMPANY, Plaintiff,
versus
HENRY M. BOSWORTH, THOMAS S. RHEA, and CARL F. CRECELIUS, Individually and as Constituting the Board of Valuation and Assessment of the State of Kentucky et al., and Robert L. Greene, Sherman Goodpaster, and James P. Lewis, Their Respective Successors, Defendants.

Said action was commenced on the 31st day of January 1914 and proceeded to final disposition at the term and day above written, and during the progress thereof, pleadings and papers were filed, process issued and returned, and orders of Court were made and entered in the order and on the dates hereinafter stated, to-wit:

On January 31st, 1914, Complainant filed its Bill of Complaint the same being as follows:

5 In the District Court of the United States for the Eastern District of Kentucky.

#769.

ILLINOIS CENTRAL RAILROAD COMPANY, Plaintiff,
versus
HENRY M. BOSWORTH, THOMAS S. RHEA, and CARL F. CRECELIUS, Individually and as Constituting the Board of Valuation and Assessment of the State of Kentucky; Henry M. Bosworth, Auditor of Public Accounts of the State of Kentucky; G. B. Likens, Assistant Auditor of Public Accounts of the State of Kentucky; James Garnett, Attorney General of the State of Kentucky; Charles H. Morris, First Assistant Attorney General of the State of Kentucky; M. M. Logan, Second Assistant Attorney General of the State of Kentucky; O. S. Hogan, Third Assistant Attorney General of the State of Kentucky; Victor A. Bradley, Commonwealth's Attorney for the Franklin Circuit Court and W. C. Marshall, County Attorney of Franklin County of the State of Kentucky, Defendants.

Bill in Equity.

6 1. The plaintiff, Illinois Central Railroad Company, avers that it is, and at all times hereinafter mentioned was a cor-

poration created by and organized under and pursuant to the laws of the State of Illinois and not by or pursuant to the laws of the State of Kentucky and a corporation and citizen of the State of Illinois and not of the State of Kentucky, and that the defendants and each and every one of them are citizens of the State of Kentucky and inhabitants of the respective districts of Kentucky, and residents in the State of Kentucky, as follows:

Said Henry M. Bosworth, Carl F. Crecelius, Victor A. Bradley, G. B. Likens, O. S. Hogan and Wiley C. Marshall, inhabitants of the Eastern District of Kentucky and all the other defendants of the Western District of Kentucky, and Henry M. Bosworth, a resident of Fayette County; Victor A. Bradley, a resident of Georgetown, Scott County, Ky.; G. B. Likens, of Frankfort in Franklin County, Ky.; O. S. Hogan, of Grant County and Wiley C. Marshall, of Franklin County, Ky.; Thomas S. Rhea, of Russellville, Logan County, Ky.; Carl F. Crecelius, of Falmouth, Pendleton County, Ky.; Charles H. Morris, of Oldham County, Ky.; M. M. Logan, of Edmonson County, Ky.; and that said Bosworth, Rhea, Crecelius, Likens, Garnett, Morris, Logan and Marshall now reside temporarily in the city of Frankfort, Franklin County, Ky., and that the matter or amount in dispute in this suit greatly exceeds the sum or value of three thousand ($3,000.00) dollars, exclusive of interest and costs.

2. The defendants, Bosworth, Rhea and Crecelius, constitute and at all of the times hereinafter mentioned constituted the Board
7 of Valuation and Assessment of the Commonwealth of Kentucky, and at all said times said Bosworth was Auditor of Public Accounts of said Commonwealth, G. B. Likens was Assistant Auditor thereof, James Garnett was Attorney General, Charles H. Morris, M. M. Logan and O. S. Hogan were First, Second and Third Assistant Attorney Generals, respectively, of said Commonwealth. Victor A. Bradley is and since the — day of ——, 1913, has been Commonwealth's Attorney for the Fourteenth Judicial District of Kentucky, including Franklin County, Ky., and that Wiley C. Marshall is and at all of the times aforesaid was County Attorney of said Franklin County and that all said defendants now hold the respective offices of which they are hereinafter alleged to have been the incumbents.

3. Plaintiff operates, and at all of the times hereinafter mentioned operated, as a common carrier of passengers and freight, a unified system of railroad extending into and through the States of Kentucky, Tennessee, Mississippi, Louisiana, Illinois, Indiana, Iowa, Wisconsin, Minnesota, Nebraska and South Dakota, and that the total mileage owned, operated, leased or controlled by plaintiff at any time during the year 1912 or 1913 was five thousand four hundred and fifty-four one hundredths (4550.54) miles, and the total mileage owned, operated, leased or controlled in said State of Kentucky in said period was five hundred and sixty-three and seventy-nine one hundredths (563.79) miles.

8 4. That between June 3, 1912, and October 1, 1912, plaintiff duly made and delivered to the defendant Bosworth, Auditor as aforesaid, a verified statement or report as prescribed by

the Kentucky Statutes, especially Section 4078 and succeeding sections, correctly and truly setting out the information required by said statutes, and was ready to make whatever additional statement and give whatever additional information said Board of Valuation and Assessment might request of plaintiff, but said defendants requested no additional information of plaintiff, but proceeded to and on the 19th day of June, 1913, did assume to make a preliminary, or tentative, franchise valuation of plaintiff's property in Kentucky in substance as follows:

That said Board on plaintiff's report for June 30, 1912, assessed for taxes of 1913 plaintiff's capital stock at 25,000,000, less tangible property assessed for State purposes $—; tax at 50 cents on each $100 and that plaintiff would have thirty days within which to ask for change in the assessment; and

That on January 3, 1914, said defendant Bosworth, as Auditor, gave to plaintiff a final notice that said Board had on said report for taxes of 1913 assessed plaintiff's franchise as follows:

Capital stock	$23,679,180.00
Less amount of tangible property assessed for State taxes	12,478,903.00
Value of franchise	11,200,277.00
Tax at 50 cents on each $100	56,001.38

9 and that plaintiff would have thirty days to make payment thereof to said office, after which time, unless paid, the penalty fixed by law would have to be enforced; that both said notices were signed by said Bosworth, Auditor, and declared that checks should be made payable to State Treasurer, but mailed to the Auditor's office.

5. That plaintiff filed with said Board its written protest against said tentative assessment and through its representatives appeared in person before said Board, and filed with said Board the affidavit of its Chief Engineer, A. S. Baldwin, verified October 21, 1913, and the other exhibits attached by the defendants to the so-called "record" or opinion by them filed, apparently, with the Secretary of said Board, a copy whereof and of said exhibits, duly certified by said Secretary Charles J. Veling, is filed herewith as a part of this bill, marked Exhibit "Y," and through said representatives discussed before said Board the said documents so filed, and the Federal census and reports of the Board of Equalization of Kentucky hereinafter referred to, but did not introduce, nor offer to introduce any other evidence, nor did the Commonwealth introduce any, and that the recital in said so-called record that "no stenographic notes of the evidence were taken, and the evidence given on this hearing was not reduced to writing" is misleading, deceptive and, insofar as it intimates that evidence was given on said hearing, but not reduced to writing, is wholly unfounded and untrue, as said defendants well know;

That defendants did not call upon plaintiff for, nor request of it,

any other evidence, nor any explanation of any of the affi-
10 davits, report, or documents introduced by defendants, nor intimate to plaintiff that they failed to understand them or any of them.

6. That after the hearings aforesaid, the said defendants promptly turned over to John L. Rich, an attorney residing in Covington, and, as plaintiff believes, temporarily acting as an assistant of the Attorney General in some matters, all the papers and documents aforesaid, to make a valuation or assessment of plaintiff's property in Kentucky for franchise taxation and to specify the reasons or basis for the assessment or valuation so made, and that said Rich forthwith carried said papers and documents to his home in Covington, Ky., about 100 miles from the State Capitol, and made the said assessment and valuation, and composed and wrote the said so-called "record," or exposition of reasons for said valuation or assessment filed by said defendants with the Secretary of the State Board as aforesaid, and thereupon the said Rich returned to the defendants at the State Capitol the said so-called "record," or opinion or exposition of reasons for such assessment filed as aforesaid, and that said defendants thereupon adopted and promulgated the said assessment and said opinion and reasons therefor, and notified plaintiff thereof, and sent to plaintiff a copy thereof, although the said Rich still retained the said report made by plaintiff to said Board and all the affidavits and documents filed as aforesaid with said Board by plaintiff, and said defendants did not have before them the said report, affidavits or other documents when they ap-
proved and adopted the said "record," or opinion, prepared
11 as aforesaid by said Rich, nor have any figures or memorandum whereby they could verify or even examine the calculations or conclusions set forth by said Rich in said record, and that said Rich retained all the said papers, documents and report filed by plaintiff as aforesaid, at his home in Covington, until long after the said defendants promulgated the said assessment and the said exposition thereof by the said Rich, and until plaintiff, through its counsel, wired the said Rich, in a telegram directed to him at Covington, Ky., requesting him to return the said papers, so that plaintiff might obtain from the Secretary of said Board a copy thereof and file with this, its bill of complaint, being copy now filed herewith as Exhibit "Y"; so the plaintiff says that the said defendants unlawfully delegated to the said Rich the duty of making, and that the said Rich so made, the said assessment or valuation, and that it is not in law the act of the said defendants as the Board of Valuation and Assessment, nor binding upon plaintiff as such.

7. That in the hearings before the said defendants aforesaid, plaintiff, through its representatives, exemplified to said defendants the usual, and virtually all known, methods of computing the valuation of railroad franchises, as well for the year 1912 as the year 1913, being Exhibit "B" and Exhibit "C" of the Exhibit "Y," certified by said Veling, whereby, and especially by Exhibit "C" it was demonstrated to said Board that by the method of valuation known

as the earnings method, the total capital stock value of plain-
12 tiff apportionable to Kentucky could not exceed, without equalization, $24,568,690; that by the method known as the reproduction value method, such total capital stock apportionable to Kentucky could not exceed $28,563,537; that by the stock and bonds method, commonly so-called, the proportion of the total capital stock of plaintiff apportionable to Kentucky could not exceed $26,855,867; that by the consideration of the footings of plaintiff's balance sheet method the proportion of such total capital stock apportionable to Kentucky could not exceed $27,862,595, and that by combining or averaging the results of such methods, being first, second, third and fourth methods, it was shown that the proportion of such capital stock apportionable to Kentucky could not exceed $26,960,172; and on the hearing in this Honorable Court on the 12th day of November, 1913, in suit No. 731, styled Illinois Central Railroad Company v. Henry M. Bosworth and others, for the purpose of fixing a sum to be paid by plaintiff to the Commonwealth as a condition precedent to the issuance of the injunction prayed for in such suit, viz., an injunction to enjoin defendant from enforcing, or causing to be enforced, the so-called valuation which they assumed to make against plaintiff for franchise taxes for the year 1912, the defendant, Attorney General, and said John H. Rich, representing the defendants Bosworth, Rhea and Crecelius, tendered and offered to file in said suit a certified copy of the bill and amended bill filed by plaintiff in this court in suit No. —, styled, Illinois Central Railroad Company, complainant, v. A. T. Siler et al., show-
13 ing by said bill the value of plaintiff's property in Kentucky to be $26,000,000, and by said amended bill to be $28,766,277.77, so that by all said evidence and exemplifications and pleadings, copies whereof were filed by defendants through their said attorneys, it was shown that the maximum amount which could by any legitimate method be fixed as the franchise tax valuation of plaintiff's property in Kentucky, was the same mentioned in plaintiff's amended bill in said Siler case, and said sums, respectively, equalized at 60%, demonstrated that by legitimate and authorized methods of valuation no sums could be fixed as the franchise tax valuation of plaintiff's property exceeding the sums represented by 60% of the sums aforesaid, to-wit, $14,735,214 (less $12,381,773), $2,353,441; $17,138,122 (less $12,381,773) $4,756,349; $16,113,520 (less $12,381,773), $3,731,747; $16,717,557 (less $12,381,773), $4,335,784; $16,176,103 (less $12,381,773), $3,794,330; $15,600,000 (less $12,381,773), $3,218,227 or $17,260,966.36 (less $12,381,773), $4,879,193.66; that in the suit No. 731 aforesaid, this court adjudged that the taxing officers of the State of Kentucky habitually, intentionally, sy-tematically and generally assessed the property of individuals and of private corporations in the State of Kentucky at 60% or less of the fair cash value of said property which it would bring at a fair and voluntary sale, and plaintiff says that said officers have for years last past habitually, intentionally, systematically and generally assessed property of individuals and of private corporations at not exceeding 50% of the fair cash value of said property which it would bring at a fair and

voluntary sale thereof; that the United States census report
14 of the year 1910 shows the value of all farms and farm property, including improvements, live stock and implements, in Kentucky to be, and they were and now are, of the value of at least $773,797,880, and that said property was for the year 1911, as appears by the report of the Kentucky Board of Equalization, assessed at $399,540,313, said assessed value being 51.6% of the real value of said property, and that such property comprised, and now comprises, 43% of the total taxable property of the State of Kentucky; that in the year 1900 similar property was assessed at 63.47% of its value, showing a rapid decrease in the ratio of assessed to actual value of said property; that by the United States census aforesaid, Volume on Wealth, Debt and Taxation, pages 38 to 42, it appears that the total taxable property in Kentucky in 1904 was assessed at 48.3% of its actual value, and that such ratio of assessed actual value was continually declining, so that the rate of equalization adopted by plaintiff, to-wit, 60%, in the tables or methods of computing valuation which plaintiff propounded to said defendants as aforesaid, was too high and plaintiff was entitled to a rate of equalization of 50%, instead of 60%, the rate used in said tables, but that, nevertheless, the said Rich, acting on behalf of said defendants, adopted and used, according to the claims made in the said record or opinion, the rate of 80%, instead of 50% or 60%.

8. That the said Rich, in making the valuation aforesaid, and in composing the said report or opinion indicating the basis thereof, and the said defendants in perfunctorily adopting the said
15 valuation and opinion or report, arbitrarily ignored the uncontradicted evidence offered by plaintiff to said defendants, and with the design and determination to make the highest possible assessment which could be invented, and accordingly ignored the net income of plaintiff for the year ending June 30, 1912, being the current year, an item universally considered theretofore by said defendants and their predecessors and all other taxing authorities, in using the net earnings method of franchise assessment of valuation; that in considering the cost of reproduction method, they ignored the excess value of plaintiff's tangible property outside the State over the value of such property inside the State, although this court had decided in said suit No. 731, between the same parties, that such excess value should be deducted; and they added to the total cost of reproducing such tangible properties the cost or book value of the stocks, bonds, cash, notes, advances and miscellaneous properties outside the State, aggregating $55,874,755.75, although said properties, as appeared by the affidavit of Martin P. Blauvelt, were not usable in the State of Kentucky in connection with the business of plaintiff, but were exclusive of the stocks and bonds covering the physical railroads and properties operated by plaintiff; that in considering the stock and bond plan or method of valuation, they intentionally ignored the common knowledge of the commercial world, as to rate of interest, and computed the value of the debenture, stocks and bonds mentioned in plaintiff's report and in its said

method of computations of valuation, at par, when said securities were worth, according to interest rates as was commonly known in the commercial world, and shown in plaintiff's said methods of computation, only such sums as the 5% interest basis would indicate, aggregating $43,310,120 less than the sum reached by the said Rich and adopted by said defendants, as aforesaid; and that in constructing an earnings plan or method of valuation, the said Rich, apparently through misapprehension, capitalized the gross corporate income, instead of the operating income, the gross corporate income being the sum of the "operating income" and "other income," the latter being the interest on securities and other items not appertaining to operation or transportation, and designedly selected for capitalization the income for years when the company's income was especially large, selecting said years arbitrarily and at pleasure, but intentionally ignoring the earnings for the year for which the valuation was being made, and that said defendants perfunctorily, as aforesaid, adopted the said work of the said Rich.

That the years selected by the said Rich were 1909, 1910 and 1911, and that he took, as aforesaid, the gross corporate income for such years, including, as aforesaid, the "operating income" and "other income," and struck an average thereof, and capitalized the result of 6%, so as to include in his valuation all the properties of the company, tangible and intangible, as well outside as inside the State of Kentucky, deducting from the total thereof, $55,874,755, regardless of any evidence of the productivity of the non-operative property represented thereby, such method or plan being worthless for any purpose, but adopted solely because of the excessive amount appearing to be realized thereby.

That the excuse given in said opinion or basis for valuation for the remarkable phenomenon of ignoring the earnings for the current year was that it appeared from plaintiff's reports that its earning capacity had suffered through strikes, floods and severe winter weather, so that its earnings were unusually small, but the said Rich and said defendants, nevertheless, made use of the earnings of the next previous year, although such earnings were unusually large, being $2,388,375.00 more than for the next previous year and $— more than for the year next prior thereto, whereby it appears that the said Rich and said defendants arbitrarily selected for consideration and capitalization the years when the earnings were greatest and ignored arbitrarily the years when they were unsatisfactory, and plaintiff says that although the "other income" for the year ending June 30, 1911, was only —% greater than the other income for the year ending June 30, 1912, such income for the former year being $6,742,438,590, and for the latter year $5,403,584.66, the operating income for the former year was $14,393,048.90, and for the latter year only $7,812,718.60, or only 55% thereof, whereby it appears that said Rich and said defendants arbitrarily pursued a plan or method of valuation or assessment obviously worthless and solely for the purpose of reaching a large amount of money as a result, regardless of real value, wherefore, it appears, and plain-

tiff says, that the valuation so made by the said Rich, and
18 perfuntorily adopted by the said defendants as aforesaid, is excessive, exorbitant and fraudulent, and made regardless of the evidence and the facts shown to the Board; that they intentionally ignored the excess value of plaintiff's tangible property outside the State, and denied the plaintiff the benefit of equalization to which it was entitled as aforesaid, to the great and irreparable damage of the plaintiff, whereby plaintiff was, by the said defendants, assuming to act as the Board of Valuation and Assessment of the State of Kentucky, a State instrumentality for the assessment and valuation of property for franchise taxation for said State, deprived of its property without due process of law and denied the equal protection of the law, in violation of the Fourteenth Amendment to the Constitution of the United States, and in violation of the Constitution of the State of Kentucky, and in disregard of the laws of said State, and plaintiff hereby sets up and relies upon the protection of said Federal and State constitutions and laws.

9. That, as it above appears, no legitimate method of franchise tax valuation shows such value of plaintiff's property in Kentucky to exceed the sum asserted as the value thereof in plaintiff's amended bill in said Siler case and that 60% thereof is only $17,260,966.66, and 50% thereof $14,381,638.88, so that the so-called assessment or valuation promulgated by the said defendants as aforesaid is exorbitant, unwarranted and fraudulent; that said defendants have intentionally denied to plaintiff the benefit of equalization to which plaintiff is entitled, as has been adjudged by
19 this court in said suit No. 731; that said defendants have denied to plaintiff the benefit of the deduction of the excess value of tangible property per mile outside the State over that inside the State, as appears by the affidavit of A. S. Baldwin, filed with said Board, and by the second method of computation of franchise tax valuation, exhibited to said Board by plaintiff, as aforesaid, and uncontradicted; that said defendants deliberately ignored the common knowledge of interest rates and arbitrarily assessed the debentures and outstanding funded debt mentioned in plaintiff's third method aforesaid, at par, when it was a matter of common knowledge, presumably known to the Board, that said debentures and funded debt were not and could not possibly be worth par on any sum exceeding the sums fixed by plaintiff in said third method of computation.

Plaintiff further states that the value of its terminal properties alone, computed upon a basis of cost of reproduction, situated in the cities of Chicago, New Orleans and Memphis, exceeds $136,000,000, and that there are no terminals of corresponding value or importance in the State of Kentucky.

The plaintiff further states, as an additional and manifest error on the part of the said Rich and the said defendants in computing the value of the plaintiff's property in Kentucky upon an income basis, that in capitalizing the item "other income," as shown by the record prepared by the said Rich, what was capitalized was not a net item, but a gross item, one subject to correction by making many

corresponding deductions upon the other side of the account,
20 all of which were ignored by the said Rich and the said defendants, and, furthermore, that the said item "other income" includes a very large sum of interest on securities owend by the plaintiff to itself and held in its treasury, and not in the hands of the public, producing a purely fictitious income, which has no existence whatever, except as a bookkeeping item, as will appear from the annual reports of the plaintiff used by the said defendants and from the official reports to the State of Kentucky, also used by them, so the item "other income" included by said Rich and said defendants in their computations as aforesaid is utterly worthless as a factor in valuation, and is misleading and deceptive and used apparently under misapprehension, or in ignorance of its effect.

10. That defendant's predecessors composing the Board of Valuation and Assessment aforesaid assessed plaintiff's property in Kentucky for franchise taxation for the year 1908 at $4,517,940, for the year 1909 at $4,509,680, for the year 1910 at $4,228,425 and for the year 1911 at $4,510,320, and plaintiff paid the amounts of said assessments, not then having sufficient information upon which it could determine whether or not such amounts were just, but has since ascertained, and it is true, by physical valuation of its properties, that value of the total capital stock of plaintiff does not exceed, for the purpose of operating a railroad over plaintiff's system of railroads, the value of the tangible properties of plaintiff, nor the cost of producing said tangible properties.

21 11. Plaintiff is ready, and has always been ready, willing and able to pay all taxes due the Commonwealth of Kentucky and all counties, cities, towns or taxing districts thereof, and has always paid promptly all such taxes for all years prior to 1912 and has, under the order of this court, promptly paid taxes upon the amount prescribed by this court as a condition precedent to the issuance of the preliminary injunction ordered by this court in suit No. 731 aforesaid;

That the defendants Bosworth, Rhea and Crecelius threaten to and, unless immediately enjoined and restrained by this court, will, although they have not yet done so or said Bosworth, Auditor, or Likens, Assistant Auditor, will certify to the county clerks of the several counties through which plaintiff's railroad in Kentucky extends the amount claimed to be due to said counties and the taxing districts thereof by reason of the valuations aforesaid, which said defendants Bosworth, Rhea and Crecelius have assumed to make as aforesaid, and that said county clerks will thereupon certify said assessments, respectively, to the tax collectors for all said counties, cities, towns and districts for collection, and said collecting officers will thereupon proceed to make collections and institute unwarranted, vexatious and multitudinous suits, actions and proceedings at law against the plaintiff, and from time to time institute and prosecute such suits, actions and proceedings, to the great annoyance and irreparable injury, costs and damage of plaintiff; and that unless immediately enjoined and restrained by this court, the

defendants Bosworth or Likens will enter in account with the
22 State Treasury of Kentucky the amount of State taxes based upon the valuation aforesaid, and defendants James Garnett, Attorney General, and Charles H. Morris, M. M. Logan and O. S. Hogan, his assistants, and Victor A. Bradley, as Prosecuting Attorney aforesaid and Wiley C. Marshall, as County Attorney of Franklin County aforesaid, will institute civil or penal actions or procure indictments against the plaintiff, based upon its assumed or supposed delinquency in the payment of taxes claimed by the defendants to be due upon the illegal and unauthorized assessment aforesaid, and will bring such actions or procure such indictments from day to day, or from time to time, with the purpose of forcing plaintiff to pay the illegal and unjust demands asserted against it on behalf of said Commonwealth and said local taxing districts, based upon the aforesaid valuation which said defendants have assumed to make as aforesaid, and the apportionment and certificate thereof which will be made as aforesaid; that the penalties for alleged delinquency of plaintiff under Section 4091 of the Kentucky Statutes are so extreme and enormous that the peril of incurring such penalties by omitting to pay the sums so illegally demanded are of such character and amount as to render it inequitable and unjust to require complainant to defend all or any of such actions or proceedings, and therefore the plaintiff is utterly without any adequate remedy at law for protecting its rights or presenting its defenses to said illegal claims made by defendants, but is remediable only in equity; and that, unless a preliminary injunc-
23 tion issue herein and be made perpetual upon final hearing, great and irreparable injury will result to plaintiff, which would be subjected to said numerous actions and prosecutions, whereby it would be stripped of its property without due process of law; and, unless a temporary restraining order issue immediately, the said defendants will make the certifications to the said county clerks, and said local officers will notify plaintiff thereof and promptly proceed to collect the amounts of such enormous assessments, and will seize and otherwise appropriate plaintiff's property, to the destruction thereof, and the value thereof, and the destruction of plaintiff's business of transportation, interstate and intrastate; that the unauthorized and illegal valuation aforesaid constitutes a cloud, and, as claimed by defendants, constitutes a lien upon plaintiff's property in the Commonwealth of Kentucky, operated, owned, leased and controlled by plaintiff, and that, unless enjoined and restrained by this court, numerous repeated and vexatious suits will be instituted to enforce or foreclose such lien claimed as aforesaid by defendants, in the endeavor to force payment of the aforesaid illegally claimed taxes which will be asserted by the defendants and local officers to be due the Commonwealth and various counties, cities, towns and taxing districts, to the great and irreparable injury and damage of plaintiff.

Wherefore, and forasmuch as complainant is remediless in the premises according to the common law and remediable only in equity, and to the end that complainant may not be subjected to a

multiplicity of suits which will otherwise result, and may not
24 suffer irreparable injury and damage, and may be permitted to pursue and carry on its business without unlawful hindrance or obstruction, and that the railroad by complainant operated in the Commonwealth of Kentucky, as aforesaid, and its other property therein may not be subjected to illegal liens and clouds, complainant prays for a writ of subpœna to issue against the defendants, and each and every one of them named and described as aforesaid, to appear and full and true answer make to this bill of complaint, said defendants Bosworth, Rhea and Crecelius stating in said answer the method whereby they reached the so-called final assessment aforesaid (of which notice was given complainant, January 3, 1914), but not under oath, answer under oath being hereby waived, and that said defendants, and each and every one of them, be enjoined by final decree, and meanwhile, by a preliminary injunction, as follows, to-wit: That said Bosworth, Rhea and Crecelius, individually, or acting as the Board of Valuation and Assessment of Kentucky, be enjoined and restrained from apportioning to any of the county clerks above referred to, or any other officers of the counties, cities, towns or taxing districts in said counties of which said clerks or the county officers are officials, the aforesaid so-called assessment, or any part thereof, for taxation or for extension of tax rates thereon; that said Bosworth, individually, or as Auditor of Public Accounts of said State, be enjoined and restrained from certifying to the said county clerks, or any of them, or any other officers of the counties of
25 which said defendants are clerks, the aforesaid so-called final assssment; that the defendant Likens, Assistant Auditor, be likewise enjoined as is herein prayed with respect to the said Bosworth; that the defendant Garnett, and the defendants Morris, Logan, Hogan, Franklin and Marshall be enjoined and restrained from instituting any action or procuring an indictment, warrant or other proceeding in court or at law to coerce the payment by complainant of any taxes upon the aforesaid illegal assessment, or any part thereof, whether on behalf of the Commonwealth or any county, city, town or taxing district, until the final order of this court, and that meanwhile a temporary restraining order issue in accordance with the prayer aforesaid for a preliminary injunction, and for all other and further relief to which complainant may be entitled, including its costs herein incurred.

BLEWETT LEE,
R. V. FLETCHER,
TRABUE, DOOLAN & COX,
Counsel for Plaintiff.

26 STATE OF ILLINOIS,
Cook County, ss:

Charles H. Markham, being first duly sworn, says that he is the President of the complainant, Illinois Central Railroad Company, and his office is at Chicago, the principal office of complainant; that he knows the contents of the foregoing bill of complaint and that the

allegations thereof are true, except such allegations as are made on information and belief, and that he believes such allegations so made to be true.

(Signed) C. H. MARKHAM.

Subscribed and sworn to before me, a Notary Public in and for the above county and State, this thirtieth day of January, A. D., 1914.

(Signed) F. G. HULL,
[SEAL.] *Notary Public.*

My commission expires December 13, 1916.

27 Exhibit Y filed with the foregoing Bill in Equity on January 31, 1914 is as follows, to-wit:

28 State of Kentucky.

Office of Auditor of Public Accounts.

FRANKFORT, January 17th, 1914.

H. M. Bosworth, Auditor.
G. B. Likens, Ass't Auditor.

This is to certify that the attached papers hereto are copies of the Report of the Illinois Central R. R. Co. as filed by said Company to Auditor of Public Accounts as of June 30th, 1912, and from which the Board of Valuation and Assessment fixed the franchise value for the taxing year 1913, and that the other papers hereto attached and marked Exhibit A. and Exhibit B. and Exhibit C. and Exhibit D. and Exhibit E. and Exhibit F. were filed with the Auditor, and are part of the report, intended for use of Board of Valuation and Assessment, in fixing the franchise value for the Illinois Central R. R. Co., for the taxing year 1913.

Attest:

H. M. BOSWORTH, *Auditor.*

CHAS. J. VELING,
Chief Clerk Corporation Dep't, Auditor of Public Accounts & Secretary Board of Valuation and Assessment.

Exhibit "Y" with Bill of Complaint in Illinois Central Railroad Company vs. H. M. Bosworth, et al. Filed January 31, 1914. J. W. Menzies, U. S. Clerk.

29 Exhibit A being part of said Exhibit Y is as follows, to-wit:

EXHIBIT "A" (Part Ex. "Y" With Bill).

STATE OF ILLINOIS,
County of Cook, ss:

Archibald S. Baldwin says that he is and for nine years last past been Chief Engineer for the Illinois Central Railroad Company, and

that under his direction and with the co-operation of Daniel J. Brumley, Engineer Maintenance of Way, and Arthur L. Davis, Office Engineer, affiant has made and caused to be made a valuation of the physical properties of the company in the State of Kentucky operated for railroad purposes, and that by computation based upon maps, profiles and other records on file in his office, as well as upon the annual reports made to him by the Division Officers, he estimated that the cost to produce new the physical properties of the company in the State of Kentucky, exclusive of rolling stock, was in the year 1912, $27,172,000.00. Affiant further states that the present value of the physical properties on that date was $24,454,800.00, the present value was ascertained by applying to the reproduction cost a reduction, which, by accurate computation in connection with valuations of the companies' properties in other States, was found to be ten per cent.

A. S. BALDWIN.

STATE OF ILLINOIS,
County of Cook, ss:

This day personally appeared before the undersigned, a Notary Public in and for the State and county aforesaid, Archibald S. Baldwin, whose signature is attached hereto, and made oath that the statements made in the foregoing affidavit are true to the best of his knowledge and belief.

Given under my hand this 21st day of October, A. D. 1913.

[SEAL.] GLENN N. ANDREWS,
Notary Public.

My Commission expires July 20, 1917.

30 Exhibit B being part of said Exhibit Y is as follows, to-wit:

31 EXHIBIT B.

Illinois Central Railroad Company.

Kentucky Franchise Assessment.

1912.

To Ascertain Value of "Capital Stock" of 564 Miles of R. R. Operated in Kentucky by I. C. R. R. Co. and Fairly Equalized Assessment of Same.

First Method.

Net Income from Operation of System 4,551 Miles, I. C. R. R.

1907	$12,750,121
1908	12,742,868
1909	12,945,935
1910	12,004,674
1911	14,393,049
Average, 5	)64,836,647
Capitalize at 6%	)12,967,329
	216,122,150
	12.3
Kentucky Mileage prorate	26,583,024
Equalize at	60%
Kentucky "Capital Stock"	15,949,814
Deduct Tangible	12,377,383
Franchise	3,572,431

32 Illinois Central Railroad Company.

Second Method.

Cost to Reproduce the Physical Property of I. C. System, as Per Affidavits.

Railroad	$318,129,000
Equipment	38,256,118
	356,385,118
	12.3%
Kentucky's mileage prorate	43,835,369

But, present worth of one average Kentucky mile, as per affidavits $51,027, and present worth of 4,551 miles at $51,027	232,223,877
Present worth of system as above	356,385,118
System value at $51,027 per mile	232,223,877
Excess outside Kentucky	124,161,241
	12.3%
Kentucky's prorate of Excess	15,271,833
Kentucky straight mileage prorate	43,835,369
Deduct prorate of Excess	15,271,833
Value of "Capital Stock" in Kentucky	28,563,536
Equalize at	60%
	17,138,122
Deduct Tangible	12,377,383
Franchise assessment	4,760,739

But, this is Estimated Cost, not Value.

33 Illinois Central Railroad Company.

Third Method.

	Par value.			Market or appraised.
I. C. Common Stock	$109,296,000	— 1911 at	132	$144,270,720
I. C. Debenture 4%	9,989,700	— at	5	7,991,760
Funded Debt, Ave. 3.7 Outstanding. Total Int. $5,866,450	157,093,000	— at	5	116,248,820
				268,511,300
But this represents all the property of the Corporation, including $54,300,746.49 worth of property that is separate and distinct from the 4,551 miles of R. R. operated, as per affidavit of M. P. Blauvelt,—deduct this				54,300,746
Remainder representing the 4,551 miles R. R.				214,210,554
				12.3
Kentucky Mileage prorate				26,347,898
Equalize at				60%
				15,808,739
Deduct Tangible				12,377,383
Remainder—Franchise				3,431,356

34 Illinois Central Railroad Company.

Fourth Method.

Assets footing of Balance Sheet	$330,139,534
Deduct amount irrelevant to mileage operated; as per affidavit of M. P. Blauvelt	112,043,198
	218,096,336
Kentucky's Mileage prorate	12.3%
	26,825,849
Equalize at	60%
	16,095,509
Deduct Tangible	12,377,383
Franchise	3,718,126

35 Illinois Central Railroad Company.

Combining Kentucky's "Capital Stock" Valuations.

First Method	$26,583,024
Second Method	28,563,536
Third Method	26,347,898
Fourth Method	26,825,849
	4)108,320,307
Average	27,080,077
Equalize at	60%
	16,248,046
Deduct Tangible	12,377,383
Franchise	3,870,663

Or $6,865 per mile.

36 Illinois Central Railroad Company.

Equalization.

In 1912 we secured the sworn statements of men of affairs in twenty Illinois Central Counties in Kentucky stating their opinions as to the ratio of assessment to real value prevailing in their respective counties. These seventy-nine opinions showed an average of 53.9% in said twenty counties.

Advanced sheets of U. S. Census Report 1910 show the value of all farms and farm property, including improvements, live stock and implements, in Kentucky $773,797,880. The Report of the Ken-

tucky State Board of Equalization shows that this property was assessed at $399,554,313, or 51.6% of the value, and this property comprised about 43% of the aggregate assessment of all taxable property in the State. This same property showed an assessment in 1900 63.4% of value. As the 1900 assessment was 63.4% of real value, and the 1910 assessment was but 51.6%, it may be assumed that the present assessment is less than 50% of the value.

Pages 38 to 42 inclusive of Volume on Wealth, Debt and Taxation of Federal Census show that Realty was assessed in Kentucky in 1900 at 62.8%, in 1904 at 62.2%; that Personalty was assessed in 1900 at 34.5%, in 1904 at 32.2%; that all taxable property was assessed in 1900 at 50.3%; in 1904 at 48.3%.

The foregoing, taken in connection with the reports of the State Board of Equalization, lead to the conclusion that Kentucky taxable property is habitually and generally assessed on the average at approximately 50% of real value.

Analysis of Aggregate Assessment of All Property Subject to Advalorem Taxation in Kentucky; Showing % that Each Class is of the Total of All Taxable Property, as Per Official Report of State Auditor and Board of Equalization.

	Arggregate assessment.	Of whole.
Lands	351,555,618	33.92%
Lots	286,524,845	27.65%
Personalty, not equalized	83,468,030	8.05%
Personalty, equalized	124,905,527	12.05%
Railroads	109,938,195	10.61%
Franchises of Miscellaneous Corporations	17,975,958	1.74%
Banks and Trust Companies	32,805,202	3.17%
Distilled Spirits	29,146,142	2.81%
	1,036,319,517	100.00%

37 Exhibit C being part of said Exhibit Y is as follows, to-wit:

38 EXHIBIT C.

Illinois Central Railroad Company.

Kentucky Franchise Assessment—1913—*on* 1912 *Return.*

I. C. System miles operated	4,551
In Kentucky miles operated	564—12.3%

First Method.

System Operating Income.

1908	$12,742,868
1909	12,945,935
1910	12,004,674
1911	14,393,049
1912	7,812,719
Average	5)59,899,245
Capitalize at	6)11,979,849
	199,664,150
	12.3%
Ky. Mileage pro.	24,558,690
Equalize at	60%
Ky. "Cap. Stk."	14,735,214
Deduct Tangible	12,381,773
Franchise	2,353,441

39 Illinois Central Railroad Company.

Kentucky Franchise Assessment—1913.

Second Method.

Cost to reproduce said 4,551 miles of R. R. as per Affidavit, R. R.	$324,790,000
Equipment	39,185,545
	363,975,545

But, cost to reproduce 564 miles R. R. in Ky. as per Affidavits	$27,172,000
Less present depreciation	2,717,200
Present worth	24,454,800
Add for Rolling Stock	4,324,749
	564)28,779,549
Average cost per mile	$51,027
Cost to reproduce 4,551 miles at $51,027 per mile	232,223,877
Actual cost to reproduce system	363,975,545
Cost at $51,027 per mile	232,223,877
Excess outside of Kentucky	131,751,668
	12.3
Kentucky prorate of excess	16,205,455
	363,975,545
	12.3%
Ky. prorate cost to reproduce system	44,768,992
Deduct Kentucky prorate of Excess	16,205,455
	28,563,537
Equalize at	60%
	17,138,122
Deduct Tangible	12,381,773
Franchise	4,756,349

40 Illinois Central Railroad Company.

Kentucky Franchise Assessment—1913.

Third Method.

	Par value,			Market or appraised.
I. C. Common Stock	$109,296,000 —	1912 at	136	$148,642,560
I. C. Debenture 4%	9,989,700 —	at	5	7,991,760
Outstanding funded debt Ave. at 3.7	158,893,000 —	at	5	117,580,820
				274,215,140

But this represents all the property of the Corporation, including $55,874,756 worth of property that is separate and distinct from the 4,551 miles of R. R. operated as per affidavit of M. P. Blauvelt. Deduct this.	55,874,756
Remainder representing the 4,551 miles R. R.	218,340,384
Kentucky mileage prorate	12.3%
	26,855,867
Equalize at	60%
	16,113,520
Deduct Tangible	12,381,773
Franchise	3,731,747

41 Illinois Central Railroad Company.

Kentucky Franchise Assessment—1913.

Fourth Method.

Assets footing of Balance Sheet	$338,481,965
Deduct amount irrelevant to mileage operated, as per affidavit of M. P. Blauvelt	112,043,198
	226,525,163
Ky. mileage prorate	12.3
	27,862,595
	60%
	16,717,557
Deduct Tangible	12,381,773
Franchise	4,335,784

42 Illinois Central Railroad Company.

Kentucky Franchise Assessment—1913.

Combining the Values Found by the Four Methods.

First Method	$24,558,690
Second Method	28,563,537
Third Method	26,855,867
Fourth Method	27,862,595
	4)107,840,689
Average "Capital Stock" Value	26,960,172
Equalize at	60%
	16,176,103
Deduct Tangible	12,381,773
Franchise	3,794,330

43 Illinois Central Railroad Company.

Equalization.

In 1912 we secured the sworn statements of men of affairs in twenty Illinois Central Counties in Kentucky stating their opinions as to the ratio of assessment to real value prevailing in their respective counties. These seventy-nine opinions showed an average of 53.9% in said twenty counties.

Advanced sheets of U. S. Census Report 1910 show the value of all farms and farm property, including improvements, live stock and implements, in Kentucky $773,797,880. The Report of the Kentucky State Board of Equalization shows that this property was assessed at $399,554,313, or 51.6% of the value; and this property comprised about 43% of the aggregate assessment of all taxable property in the State. This same property showed an assessment in 1900 63.4% of value. As the 1900 assessment was 63.4% of real value, and the 1910 assessment was but 51.6%, it may be assumed that the present assessment is less than 50% of the value.

Pages 38 to 42 inclusive of Volume on Wealth, Debt and Taxation of Federal Census show that Realty was assessed in Kentucky in 1900 at 62.8%, in 1904 at 62.2%; that Personalty was assessed in 1900 at 34.5%, in 1904 at 32.2%; that all taxable property was assessed in 1900 at 50.3%, in 1904 at 48.3%.

The foregoing, taken in connection with the reports of the State Board of Equalization, lead to the conclusion that Kentucky taxable property is habitually and generally assessed on the average at approximately 50% of real value.

Analysis of Aggregate Assessment of All Property Subject to Advalorem Taxation in Kentucky; Showing % that Each Class is of the Total of All Taxable Property, as Per Official Reports of State Auditor and Board of Equalization.

	Aggregate assessment.	Of whole.
Lands	351,555,618	33.92%
Lots	286,524,845	27.65%
Personalty, not equalized	83,468,030	8.05%
Personalty, equalized	124,905,527	12.05%
Railroads	109,938,195	10.61%
Franchises of Miscellaneous Corporations	17,975,958	1.74%
Banks and Trust Companies	32,805,202	3.17%
Distilled Spirits	29,146,142	2.81%
	1,036,319,517	100.00%

44 Illinois Central Railroad Company.

Kentucky Franchise Assessment—1913.

All R. R., 3,587 Miles, in Kentucky.

Net Operating Income.

1907	$12,202,194
1908	11,641,956
1909	14,119,190
1910	17,496,839
1911	16,377,443
	5)71,837,622
Average	14,367,524

1911 Assessment... 109,938,195, or 7.65 times average net.

Net—I. C. 564 Miles in Kentucky.

1907	$1,339,460
1908	1,207,329
1909	1,445,227
1910	1,740,869
1911	2,327,768
	5)8,060,653
Average	1,612,131

1911 Assessment ... 16,843,993,or10.45 times average net.

I. C. Assessment 36% greater than the average for all Railroads in Kentucky.

45 Exhibit D being part of said Exhibit Y is as follows, to-wit:

46

EXHIBIT D.

Kentucky—Data in Re 1912 *Franchise Ass't in Federal Court.*

1911 "Capital Stock" Assessment.....	$16,843,993
Tangible	12,333,673—Paid on.
Franchise	4,510,320—Paid on.
1912 "Capital Stock" Assessment.....	$27,124,240
Tangible	12,377,383—Paid on.
Franchise	14,746,857—In Litigation.

Tarbet's Blue Print, Presented to Bd. of V. & A. May 10, 1912.

Average Ky. Net for last 5 years.....	$1,612,131	
Capitalized at 6%.....	26,868,850	
Stock & Bond Value.....	25,855,154	
Present Worth by Reproduction.....	25,675,918	
Average	26,133,307	
Equalize at	56.8%	(Our 20 counties only.)
Kentucky "Cap. Stock" Value for ass't....	14,843,718	
Deduct Tangible	12,377,383	
Franchise	2,466,335	

Tarbet's Typewritten Statement, Presented to Bd. of V. & A. June 20, 1912.

Ave. System Net for last 5 years.....	$12,967,329	
Capitalized at 6%.....	216,122,100	
Kentucky Mileage Prorate.....	12.35	
Kentucky "Capital Stock" Value.....	26,691,085	
Equalize at	58.4%	(Our 20 counties only.)
Ky. "Capital Stock" Assessment.....	15,587,594	
Deduct Tangible	12,377,383	
Franchise	3,210,211	

New Presentation, all System Values Prorated to Kentucky.

	Ky. prorate of "cap. stk." value.	
1. From System Net.....	$26,583,024	
2. From Reproduction	28,563,536	
3. From Stock & Bonds.....	26,347,898	
4. From Balance Sheet.....	26,825,849	
Average Ky. "Capital Stock" Value.....	27,080,077	
Equalize at	50%	(State wide ratio.)
Ky. "Capital Stock" Assessment.....	16,248,046	
Deduct Tangible	12,377,383	
Franchise.....	3,870,663	

Equalization.	U. S. Census figures—ratio assessment to value. 1900.	1904.	1910.
All Kentucky Taxable.....	50.3%	48.3%	.....
" " Realty	62.8	62.2	.....
" " Personalty	34.5	32.2	.....
" " Farm Property.	63.4	.....	51.6%

Reports of State Board of Equalization corroborate this showing.

The Equalization Ratio used in the blueprint, 56.8%, was the average of 79 admissions by county officials and men of affairs in their 20 respective counties. McCracken County showed 38.5% and Webster County showed only 27.5%. Mr. Rhea protested that those counties were not assessed lower than 50%; so for the sake of argument I substituted 50% for each of those counties notwithstanding the admissions of the men best informed in their own counties, and so raised the average 58.4% in the typewritten statement.

47 Form 1579.

Illinois Central Railroad Company.

Office of Land & Tax Commissioner.

Kentucky: Franchise Assessments.

CHICAGO, December 6, 1913.

MY DEAR MR. BOSWORTH: There was so little time Friday to discuss the facts that should be considered when an assessment of millions is being made that I am writing you today and beg that you will give this letter very careful attention.

We have paid tax on over $12,000,000 assessment of tangible, and now the Board proposes to make us pay for 1913 on the balance of $25,000,000 that should in all fairness be not over $16,800,000.

I have submitted to the Board carefully prepared and truthful statements that conclusively show that the real value of our "Capital Stock" in Kentucky is not over $28,000,000 and that it should be equalized as low as 60% which gives $16,800,000 as the fair and just assessment for 1912 or 1913. Lest you have mislaid those statements I enclose copies.

Judge Cochran says the Court cannot fix the value; it is the duty of the Board. A mixup of erroneous findings by the Board, complications with other litigants, and a misapprehension by the Court as to our representations of our value has resulted in an order from the Judge for us to pay a balance on $18,986,968 for 1912. It is too much by over $2,000,000.

The Board can capitalize the extraordinarily big earnings of an exceptionally fortunate year, or of two good years, and call that the value; or it can take the sum of all Stocks and Bonds no matter what property they represent outside the Railroad and call that the value, or adopt any other unsound method to find a larger full value in Kentucky than $28,000,000, but no such procedure is equitable or to the credit of the State.

As to Equalization you can insist that you should equalize at 80% because you assess Banks at 80%. The fact is you do not assess Banks at 80% of full value. You assess at 80% the Capital Stock (at par value), Surplus and Undivided Profits, and the Capital Stock is (page 471 Auditor's Report 1910-1911) 71% of it

all, and 80% of its par value Judge Cochran thinks is only about 60% of its real full value. (Page 44, Judge Cochran at Richmond). But it would not materially alter the general ratio at which all property in the State is assessed if you were to actually assess the Banks at 100% of actual full value of the shares of stock. Such an increase in the assessment you would then make on less than 4% of all the taxable property in the State would not raise the
48 average ratio of assessment of all the property in the State enough to amount to anything.

I think you must know that the average ratio in Kentucky is not over 60%. Everybody else knows it, and most people who have no ax to grind will admit it is as low at 50%.

Assuming you want to make a just assessment in our case, both for 1912 and 1913 why should you insist on equalizing at over 60%? We are a large taxpayer,—$225,000 per annum in Kentucky. We want to pay what is fair and right, but cannot afford to acquiesce in an excessive assessment. I take it the function of the Board is not to extract from us every dollar it possibly can without regard to the rights of the matter, but to weigh all the facts that help to ascertain value of our property and the proper ratio for equalization.

Our value is not over $28,000,000 and the prevailing ratio is not over 60%. Both facts can be proved to the satisfaction of any intelligent unbiased man who will really take the trouble to study them.

We have for some years past been paying more than our fair share of the Railroad taxes in Kentucky, (See page 6 of 1913 statement) and you all seem bent upon increasing our burden without due regard to the real value of the property. Please digest this letter and the enclosed statements when and where you will not be interrupted, and before you take final action. And this is certainly not too much to ask of one to whom so important a duty is intrusted by the State.

Yours truly,

W. L. TARBET,
Land and Tax Commissioner.

T./C.
encls.

Hon. H. M. Bosworth, State Auditor, Frankfort, Kentucky.

49 Exhibit E being part of said Exhibit Y is as follows, to-wit:

No. 769.

EXHIBIT "E" (PART EX. "Y") WITH BILL OF COMPLAINT.

The Board of Valuation and Assessment met on the — day of November 1913, in the State Capitol for the purpose of considering the protest filed by the Illinois Central Railroad Company, and for the purpose of hearing this company's complaint against the tentative assessment of its franchise for taxation for the year 1913, and

there were present as members of said Board, H. M. Bosworth, Auditor of Public Accounts, Thomas S. Rhea, Treasurer and C. F. Crecelius, Secretary of State and the following proceedings were had.

On motion it was ordered that James Garnett, Attorney General, be requested to attend said Board at its meetings and advise with it in its proceedings. Thereupon came Mr. E. F. Trabue and Mr. Wm. L. Tarbet, attorneys, for the Illinois Central Railroad Company and presented their complaint and objections to the tentative assessments of said corporation. No stenographic notes of the evidence were taken and the evidence given on this hearing was not reduced to writing. All exhibits filed by the representatives of said company and written statements made by them are filed herewith and made part hereof. The hearings were continued from time to time until completed and the Board then continued said
50 meetings from day to day until the 3rd day of January, 1914, when it made and adopted the following findings.

In ascertaining the value of the corporate franchise of a railroad company operating lines of railway in Kentucky and elsewhere, the Board of Valuation and Assessment conceived it to be its duty to first ascertain the fair cash value of the capital stock of all the assets of the corporation under consideration, and then to ascertain the proportion thereof which the mileage of said company in this State bears to the mileage within and without the State, which proportion the Board should consider in fixing the value of the corporate franchise, and from the value of that proportion of the capital stock in Kentucky should be deducted the assessed value of all tangible property assessed in this State or counties where situlated. The remainder thus found will be the value of the corporate franchise.

The Board is of the opinion and believes the fair cash value of the capital stock of a Railroad Company can be more accurately ascertained in most instances by capitalizing the net income of the corporation. However, it appears from the evidence before the Board the net income of respondent for the year ending June 30, 1912, was much less than it was in the next previous years and this extreme decrease in its revenues was extraordinary and caused by strikes of its employes during that year and by reason of floods and extreme cold weather during the winter months. Therefore, in ascertaining the value of the capital stock of respondent, the Board considered the market value of its outstanding shares and
51 funded debt, its gross and net earnings for three years next previous to June 30, 1912, and all other evidence offered by respondent relative thereto.

The Evidence Before the Board As to the Value of Capital Stock of Respondent.

The evidence shows respondent had outstanding on June 30, 1912, the following securities. (See report and exhibits to Auditor.)

I. C. Common Stock	$109,296,000.00
I. C. Debenture Stock	9,989,700.00
Ou-standing funded debt	158,893,000.00

The Board considered the report made by respondent to the Auditor as of June 30, 1912, for the purpose of enabling the Board to determine the value of its corporate franchise. The gross and net income of respondent, for the year, derived in Kentucky and on its entire system are fully set forth in this report and agree with report to Kentucky Railroad Commission and the Interstate Commerce Commission and report to stockholders as to its gross and net income and mileage.

The report of respondent to Auditor for years ending June 30, 1909, 1910 and 1911, as to the gross and net earnings of respondent in Kentucky and its entire system for those years were considered. The Board finds, from consideration of those reports, the gross and net income of respondent for the year ending June 30, 1912, were much less than for the next previous years. In their
52 report to stockholders for that year, the Directors of the company made this statement as to the cause of the decrease in its revenues, gross and net, for that year:

"The principal reason- for the decrease were a strike of the shopmen which began on September 30, 1911, on all of the different lines of your company and continued as a disturbing factor for several months; an unusual severe winter which seriously effected the movement by traffic on the northern lines; and the floods in the spring on the southern lines, which not only interrupted traffic but caused a large increase in operating expense."

It is urged on behalf of respondent that this extraordinary decrease in its revenues is the measure of the depreciation of the value of its property.

A decrease in the revenues of a corporation or person for a single year, because of inability to operate its business on account of labor trouble or other misfortune, or on account of increased expense of operation due to extraordinary climatic or other conditions for a short period of time, does not permanently impair or lessen the value of the property of the corporation or person so effected.

If the owner of real estate should be unable to rent his property for half a year, or the owner of a farm by reason of unseasonable weather could only plant or raise one-half the usual crop, the real estate or farm would not be diminished in value by one-half.

The respondent filed, and the Board considered, the affidavits of its engineers stating the value of the physical property of
53 respondent used for railroad purposes exclusive of rolling stock was on June 30, 1912, $324,790,000.00. (See affidavit of A. L. Davis, A. S. Baldwin and D. J. Brumley attached to report to Auditor.) And also considered the affidavit of Superintendent of Motive Power of respondent showing the value of all the rolling stock of respondent on June 30, 1912, located everywhere was $39,185,545.00. (See affidavit of M. K. Barnum, Superintendent Motive Power, of respondent attached to report to Auditor.)

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Therefore, it appears from this evidence the real value of respondent's physical and tangible property, including equipment used in the conduct of its business, of June 30, 1912, was $363,975,545.00.

The respondent also filed with its report to the Auditor made as of June 30, 1912, the affidavit of its Comptroller, Martin P. Blauvelt, which sets forth and states that respondent had, outside of the State of Kentucky, the following stocks, bonds, cash, notes, advances and miscellaneous property not used for railroad purposes on June 30, 1912:

	Cost or Book Value.
Stocks	$5,033,167.12
Bonds	47,545,923.01
Cash	2,294,798.40
Notes	442,246.39
Advances	112,147.22
Miscellaneous properties	446,473.61
	$55,874,755.75

54 The affiant did not state the stocks, bonds, notes, advances and miscellaneous property of respondent above set forth were worth, or have an actual value of $55,874,755.75.

The affiant does not give a list of the stocks, bonds and notes, or describe the miscellaneous properties which respondent holds as investments and which are not used in its business and thus enable the Board to investigate and determine their actual value.

The road and equipment of respondent is worth and has an actual value of $363,975,545.00. (See affidavits of engineers and General Superintendent of Motive Power.) If the property mentioned in affidavit of Blauvelt which we will designate as non-operative property is worth $55,874,755.75, then the value of the properties of respondent, operative and non-operative property, or the total capital stock of respondent, on June 30, 1912, was $419,850,300.00.

The respondent filed an exhibit with the Board (see third method in exhibit) which shows the total value of the capital stock of respondent, on June 30, 1912, was $274,215,140.00
from which is deducted 55,874,756.00

the assumed value of non-operative property of respondent, thus showing the value of the property, or capital stock of respondent used in its business on June 30, 1912, was 218,340,384.00

55 This exhibit is at variance with and wholly contradictory of the evidence of respondent, engineers and Superintendent of Motive Power, who make oath that the actual value of the physical property of respondent, including equipment used in its business, on June 30, 1912, was $363,975,545.00.

The difference between the estimated value of the total capital

stock of respondent used in its business, as shown by the exhibits referred to and the value placed thereon by the engineers of respondent, is $145,635,161.00.

This conflicting evidence, as to the actual value of the capital stock of respondent, submitted for the consideration of this Board, tends to confuse the members thereof, rather than to enlighten them as to the real value of its property.

The evidence before the Board does not warrant the belief that the non-operative property of respondent was on June 30, 1912, of the value of $55,874,755.00.

The Board also considered the following calculations, in connection with those submitted by respondent, which are made a part hereof, as though fully set forth, and all other evidence offered in arriving at the value of respondent's corporate franchise in Kentucky.

56 Valuation.

Stock and Bond Plan.

Shares	$109,296,000.00
Average price	136.00
Value stock	148,642,560.00
Debenture Stock	9,989,700.00
Bonds	158,893,000.00
Total Capital	317,525,260.00
Value Capital Stock in Kentucky on mileage basis, 12.3	39,055,606.98
Equal 80 per cent	31,244,485.00
Deduct tangible property in Kentucky	12,478,903.00
Franchise in Kentucky	18,765,582.00

Valuation.

Value of Capital Stock of Respondent used in its business ascertained by finding total value by Stock and Bond Plan and deducting Alleged Value of Non-Operative Property and apportioning Remainder to Kentucky on Mileage Basis:

Common stock	$109,296,000.00 @ $136	$148,642,560.00
Debentures	9,989,700.00 @ par	9,989,700.00
Outstanding funded debt	159,893,000.00 @ par	158,893,000.00
Value of entire Capital Stock		$317,525,260.00
Deduct		55,874,755.00
Total		$261,650,505.05

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Kentucky's proportion Capital Stock on mileage basis 12.3 per cent	$32,183,021.00
80 per cent	25,745,409.00
Deduct assessed value of tangible property in Kentucky	12,478,903.00
Value of franchise	13,267,506.00

(See exhibit filed by respondent.)

Valuation.

Value of Capital Stock ascertained by capitalizing Total Earnings for years, 1909 to 1911, and deducting Alleged Value of Non-Operative Property:

1909		$17,083,763.00
1910		16,069,778.00
1911		21,135,487.00
	3)	$54,279,028.00
Average 3 years	6)	$18,093,300.00
Total Value Capital Stock		$3,015,550.00
Deduct Alleged Value of non-operative property.		55,874,755.00
Total Value of Capital Stock		$245,665,245.00
Kentucky's proportion 12.3		30,216,825.00
80 per cent		24,173,460.00
Deduct tangible property in Kentucky		12,478,903.00
Franchise		11,694,557.00

NOTE.—Total earnings of respondent for years 1909 to 1911, as shown by report to Auditor of Kentucky for those years.

58 Mileage.

The Board finds the respondent owns, operates, leases or controls 4,550.74 miles of railway in Kentucky and elsewhere, 563.79 of which, or 12.3% thereof is in Kentucky.

Apportionment.

The Board finds the ratio of gross operating revenues of respondent derived in Kentucky, to the gross operating revenues of its entire system for year ending June 30, 1912, was 12.03%.

That the net operating revenues of respondent derived in Kentucky to the net operating revenues of its entire system for said year was 12.09%. (See report of respondent to Auditor and Kentucky Railroad Commission.) In view of the fact, the ratio of gross

and net earnings of respondent derived wholly within the State of Kentucky from the operation of its road in Kentucky, for the year ending June 30, 1912, and the next previous fiscal years was equal to the ratio of mileage of respondent in Kentucky, the Board is of the opinion and finds that the mileage of respondent in Kentucky is as valuable as the average mileage of the system and an apportionment of the entire capital stock of respondent to Kentucky of the mileage basis for the purpose of ascertaining the value of its franchise is fair and equitable to the State and company.

In arriving at the basis for estimate of value of the capital
59 stock or property of respondent used in its business, the Board has considered the evidence offered by respondent as to the real value of its road and equipment used in its business and the evidence as to the cost of reproduction. The market and real value of its stock and bonds and the gross and net earnings of respondent within and without Kentucky, and all other matters appertaining thereto. The Board has considered all the evidence offered by respondent and the exhibits filed in connection therewith, and upon consideration of all the foregoing and after hearing the arguments of counsel for respondent and after having taken time to thoroughly consider all matters brought out on the hearing, it is now adjudged and determined by the Board of Valuation and Assessment of Kentucky, that the fair cash value of the total capital stock of the Illinois Central Railroad Company used in its business in Kentucky and elsewhere during the year ending June 30, 1912, was $280,000,000.00. That the value of its proportion of the capital stock in Kentucky on the mileage basis, 12.3%, for that period, was $34,400,000.00.

Therefore, the Board of Valuation and Assessment finds and determines the value of Kentucky's proportion of the entire capital stock of respondent at $43,400,000.00, and to be conservative and out of an abundance of caution to the end that no injustice may be done respondent, in arriving at the value of the corporate franchise of the respondent in this State, the Board has considered less than 80% of that which it believes to be the fair cash value of Kentucky's
60 proportion of the entire capital stock of respondent, to-wit, $34,400,000.00, and has made an additional, or arbitrary, deduction from the amount thus found on account of the decrease in earnings of respondent for year ending June 30, 1912. It is now ordered that the value of the capital stock of the Illinois Central Railroad in Kentucky for the year of 1913, be fixed at $23,679,180.00, which, in the opinion of the Board, is less than 80% of its fair cash value with an additional reduction for reasons set forth from which sum is deducted the assessed value of its tangible property in Kentucky, or the counties where situated, to-wit: $12,478,903.00, and the remainder, to-wit, $11,200,277.00 is adjudged to be the value of the franchise of the Illinois Central Railroad Company in Kentucky, subject to taxation for the year 1913. The roll being called upon the adoption of the foregoing order the members voted as follows:

H. M. Bosworth Votes Yes.
Thos. S. Rhea Votes Yes.
C. F. Crecelius Votes Yes.

H. M. BOSWORTH,
Auditor and Chairman.

Attest:
By CHAS. J. VELING, *Sec.*

Prepared and certified as correct copy.

Therefore said order is adopted and the Auditor will certify the valuation as fixed herein and the Clerk will give respondent a copy of this order.

Exhibit F being part of said Exhibit Y is as follows, to-wit:

61 EXHIBIT F.

Form A-8.

Report of the Illinois Central Railroad Company, Operating the Chicago, St. Louis & New Orleans Railroad, Paducah Union Depot Co., and the Kentucky Valley Railroad Property under Leases Covering Franchises as well as Tangible Property, to the Auditor of Public Accounts of Kentucky, June 30, 1912.

Article IV, Subdivision 1.

Assessment of Certain Corporations.

§ 1. Every railway company or corporation, and guarantee or security company, gas company, water company, ferry company, bridge company, street railway company, express company, electric light company, electric power company, telegraph company, press dispatch company, telephone company, turnpike company, palace-car company, dining-car company, sleeping-car company, chair-car company, and every other like company, corporation or association, also every other corporation, company or association having or exercising any specail or exclusive privilege or franchise not allowed by law to natural persons, or performing any public service, shall, in addition to the other taxes imposed on it by law, annually pay a tax on its franchise to the State, and a local tax thereon to the county, incorporated city, town or taxing district, where its franchise may be exercised. The Auditor, Treasurer and Secretary of State are hereby constituted a Board of Valuation and Assessment for fixing the value of said franchise, except as to turnpike companies, which are provided for in section 1 of sub-division 4 of this article, the place or places where such local taxes are to be paid by other corporations on their franchise, and how apportioned, where more than one jurisdiction

is entitled to a share of such tax, shall be determined by the Board of Valuation and Assessment, and for the discharge of such other duties as may be imposed on them by this act. The Auditor shall be chairman of said board, and shall convene the same from time to time, as the business of the board may require. It shall be the duty of the Attorney-General, when requested by the Board of Valuation and Assessment, to attend said board at its meetings and advise with same in its proceedings.

§ 2. In order to determine the value of the franchise mentioned in the next preceding section, shall annually, between the thirtieth day of June and the first day of October, make and deliver to the Auditor of Public Accounts of this State a statement, verified by its president, cashier, secretary, treasurer, manager, or other chief officer or agent, in such form as the Auditor may prescribe, showing the following facts, viz:

Name of corporation: Illinois Central Railroad Co.

Name the principal place of business of the corporation, company or association you represent: 135 Park Row, Chicago, Ill.

Give the correct post-office address of the company: 135 Park Row, Chicago, Ill.

Give the name and official position of the officer making this report: Name,—; Position, —.

Give name of State under which company is incorporated: State of Illinois.

The kind of business in which the said corporation, company or association is engaged: Common Carrier.

The amount of capital stock, preferred and common, of said corporation, company or association, as of date of June 30, 1912: Preferred, None; Common, 109,296,000.00; Debenture, 9,987,700.00.

Number of shares, preferred and common, composing the capital stock of the said corporation, company or association, on June 30, 1912: Preferred, None; Common, 1,092,960; Debenture, 99,897.

Amount of capital stock, as above, paid up, $..
Par value of the preferred stock, as above, $.. } as above stated
Par value of the common stock, as above, $..
Real value of the stock, as above: Preferred $.. Common, $..

Highest price at which the stock above mentioned was sold at a bona fide sale within twelve months next before June 30, 1912: $— per share.

Amount of surplus fund and undivided profits, and the value of all other assets of the said corporation, company or association on June 30, 1912: Surplus fund, —; Undivided profits, $—; value of all other assets, $—.

State the total amount of indebtedness, as principal of the said corporation, company or association, on June 30, 191-: Bonded indebtedness, $—; Rate of interest paid 3 to 6 per cent. Other indebtedness, $—; Amount of interest paid, $—; Total indebtedness, $—.

Typewritten across face of preceding paragraph: See General Balance Sheet filed herewith.

State separately the total amount of gross and net earnings, or income of the said corporation, company or association, including interest on investments, and income from all other sources for twelve months next before June 30, 191-:

Gross earnings or income ..... $....

Less expenses, { Salaries ..... $.. ; Wages ..... $.. ; Interest ..... $.. ; Dividends ..... $.. ; Enlargement of plant .... $.. ; Maintenance of equipment, $.. ; Depreciation ..... $.. ; Other expenses ..... $.. } See statements and affidavits attached. Total, $....

Net income ..... $....

Amount and kind of tangible property in this State owned by the said corporation, company or association on September 1, 191-: Amount of tangible property, $12,377,383,—Assessment 1911.

Kind of tangible property: All the property of the Chicago, St. Louis and New Orleans Railroad Co. in Kentucky; and also all the property of the Paducah Union Depot Co. and Kentucky Valley R. R. Co., all being in the State of Kentucky and operated by Illinois Central R. R. Co. under lease of Tangible property, Franchise and everything else.

62 Illinois Central Railroad Company.

Statement Showing Results of Operation of the Whole Line and of the Road Located in Kentucky for the Year Ended June 30th, 1912.

	I. C. system.	Kentucky.
Operating Revenue	$58,727,272.17	$7,070,231.40
Operating Expenses	48,121,466.54	5,730,648.70
Net Operating Revenue	10,605,805.63	1,339,582.70
Outside Operations:		
Revenues	$493,378.32	$28,635.23
Expenses	600,735.22	35,972.86
Net Deficit	107,356.90	7,337.63
Total Net Revenue	10,498,448.73	1,332,245.07
Taxes	2,685,730.13	224,389.44
Operating Income	7,812,718.60	1,107,855.63
Other Income	5,403,584.66	348,496.28
Gross Corporate Income	13,216,303.26	1,456,351.91
Rents accrued for Lease of Other Roads	3,139,788.86	12,039.70
Other Rents	757,478.20	16,118.45
Other Interest	7,737.53	.....
Other Deductions	3,955.80	.....
Interest accrued on Funded Debt	5,840,895.00	1,047,697.00
Net Corporate Income	3,466,447.87	380,496.76

The foregoing is true and correct to the best of my knowledge, information and belief.

W. C. PARKER, (Signed)
General Auditor.

STATE OF ILLINOIS,
County of Cook, ss:

Subscribed and sworn to before me this 25th day of September, A. D., 1912.

P. S. HANNAGAN, (Signed)
Notary Public.

General Balance Sheet—June 30, 1912.

Assets.	1912.
Property investment:	
Road and equipment:	
Investment to June 30, 1907	$95,198,029.47
Investment since June 30, 1907	33,307,892.99
Reserve for accrued depreciation—credit	4,245,590.13
Total road and equipment	$124,260,332.33
Securities:	
Securities of proprietary, affiliated and controlled companies—pledged	27,664,070.67
Securities of proprietary, affiliated and controlled companies—unpledged	18,471,116.39
Other investments:	
Advances to proprietary, affiliated and controlled companies for construction, equipment and betterments	61,365,397.91
Miscellaneous investments	37,070,305.60
Total property investment	$268,831,222.90
Working assets:	
Cash	$1,856,735.32
Securities issued or assumed—held in treasury	26,751,080.00
Marketable securities	16,865,789.67
Loans and bills receivable	814,640.40
Traffic and car-service balances due from other companies	
Net balance due from agents and conductors	3,170,063.45
Miscellaneous accounts receivable	4,609,572.80

Liabilities.	1912.
Stock:	
Common capital stock	$109,296,000.00
Debenture 4% leased line stock	9,989,700.00
Total stock	$119,285,700.00
Mortgage, bonded and secured debt:	
Bonded debt	$185,636,000.00
Real estate mortgage	100,000.00
Total mortgage, bonded and secured debt	$185,736,000.00
Total capital liabilities	$305,021,700.00
Working liabilities:	
Loans and bills payable	$5,900,000.00
Traffic and car-service balances due to other companies	435,161.17
Audited vouchers and wages unpaid	6,582,328.15
Miscellaneous accounts payable	7,209,177.49
Matured interest, dividends and rents unpaid	1,448,261.55
Matured mortgage, bonded and secured debt unpaid	9,331.97
Other working liabilities	184,898.72
Total working liabilities	$21,769,159.05
Accrued liabilities not due:	
Unmatured interest, dividends and rents payable	$5,395,175.95

Material and supplies	3,830.794.79	Taxes accrued	330,386.60
Total working assets	$57,898,676.43	Total accrued liabilities not due	$5,725,562.55
Accrued income not due:		Deferred credit items:	
Unmatured interest, dividends and rents receivable	$1,086,132.78	Operating reserves	$349.972.43
		Liability on account of provident funds	258,476.43
		Other deferred credit items	276,140.25
		Total deferred credit items	$884,589.11
Deferred debit items:		Grand total liabilities	$333,401,010.71
Advances	$7,805,897.28		
Rents and insurance paid in advance	9,119.98		
Special deposits	41.850.00		
Cash and securities in insurance and other reserve funds	2,086,259.39	Appropriated surplus:	
Cash and securities in provident funds	250,000.00	Additions to property since June 30, 1907, through income	$226,328.67
Other deferred debit items	472,806.58	Reserve for insurance fund	2.086,259.39
Total deferred debit items	$10,665,933.23	Profit and loss:	
		Balance	$2,768,366.57
Grand total	$338,481,965.34	Grand total	$338,481,965.34

64 STATE OF ILLINOIS,
County of Cook, ss:

Archibald S. Baldwin says that he is and for about 7½ years last past has been the Chief Engineer for the Illinois Central Railroad Company and that under his direction and with the co-operation of Daniel J. Brumley, Engineer of Construction, and Arthur L. Davis, Office Engineer, of the Illinois Central Railroad Company, affiant has made and caused to be made a valuation of the physical properties of the Company operated for railroad purposes, which valuations has only lately been completed, and that by computation which is accurate and reliable he has just ascertained that the value of such physical railroad and other properties, exclusive of rolling stock, was, on June 30th, 1912, $324,790,000.00.

(Signed) ARCHIBALD S. BALDWIN.

STATE OF ILLINOIS,
County of Cook, ss:

This day personally appeared before the undersigned, a Notary Public in and for the State and County aforesaid, Archibald S. Baldwin, whose signature is attached hereto, and made oath that the statements made in the foregoing affidavit are true to the best of his knowledge and belief.

Given under my hand this 19th day of November, A. D. 1912.

[NOTARY SEAL.] (Signed) GLENN N. ANDREWS,
Notary Public.

My Commission Expires August 14, 1913.

65 STATE OF ILLINOIS,
County of Cook, ss:

Daniel J. Brumley says that he is and for about eight years last past has been the Engineer of Construction for complainant Illinois Central Railroad Company and has made and caused to be made a valuation of the physical properties of complainant operated for railroad purposes, which valuation has only lately been completed, and that by computation which is accurate and reliable he has just ascertained that the value of such physical railroads and other properties, exclusive of rolling stock, was, on June 30, 1912, $324,790,000.00.

(Signed) DANIEL J. BRUMLEY.

STATE OF ILLINOIS,
County of Cook, ss:

This day personally appeared before the undersigned, a Notary Public in and for the State and County aforesaid, Daniel J. Brumley, whose signature is attached hereto, and made oath that the statements made in the foregoing affidavit are true to the best of his knowledge and belief.

Given under my hand this 19th day of November, A. D. 1912.

[NOTARY SEAL.] (Signed) GLENN N. ANDREWS,
Notary Public.

My Commission Expires August 14, 1913.

66 STATE OF ILLINOIS,
County of Cook, ss:

Arthur L. Davis says that he is and for about six years has been an Engineer in the service of the complainant Illinois Central Railroad Company and for the last year has been Office Engineer for the said Company, and that in connection and in co-operation with Daniel J. Brumley, the Engineer of Construction for the said Company, affiant has made and caused to be made a valuation of the physical properties of complainant operated for railroad purposes, which valuation has only lately been completed, and that by computation which is accurate and reliable he has just ascertained that the value of such physical railroads and other properties, exclusive of rolling stock, was, on June 30, 1912, $324,790,000.00.

(Signed) A. L. DAVIS.

STATE OF ILLINOIS,
County of Cook, ss:

This day personally appeared before the undersigned, a Notary Public in and for the State and County aforesaid, A. L. Davis, whose signature is attached hereto, and made oath that the statements made in the foregoing affidavit are true to the best of his knowledge and belief.

Given under my hand this 19th day of November, A. D. 1912.

[NOTARY SEAL.] (Signed) GLENN N. ANDREWS,
Notary Public.

My Commission Expires August 14, 1913.

67 Illinois Central Railroad Company.

Statement Showing Amount of Rolling Stock.

STATE OF ILLINOIS,
County of Cook, ss:

I, M. K. Barnum, being duly sworn depose and say that I am the General Superintendent of Motive Power of the Illinois Central Railroad Company and that in my office are kept the records of all the rolling stock of said Company showing the cost, the extent of the depreciation and the value thereof and that I am a proper person to make this affidavit and that according to the said records the value of all of the rolling stock of the Illinois Central Railroad Company on June 30th, 1912, located anywhere, was $39,185,545.00 and that the said valuation is true and correct according to the best of my knowledge and belief.

(Signed) M. K. BARNUM.

STATE OF ILLINOIS,
County of Cook, ss:

This day personally appeared before the undersigned a Notary Public in and for the State and County aforesaid, M. K. Barnum,

whose signature is attached hereto and made oath that the statements made in the foregoing affidavit are true to the best of his knowledge and belief.

Given under my hand this 18th day of November, 1912.

[NOTARY SEAL.] (Signed) C. B. WINTERSMITH,
Notary Public.

My Commission Expires Sept. 25, 1913.

68 STATE OF ILLINOIS,
County of Cook, ss:

I, Martin P. Blauvelt, being duly sworn depose and say, that I am and for 2½ years last past have been Comptroller of the Illinois Central Railroad Company; that the records of the Company showing the stocks, bonds and other property of the Company are, and have always been, kept in the office of said Comptroller, in the City of Chicago, Illinois, and that I have and have always had access thereto, and that as shown by the said records, the amounts of stocks, bonds, cash, notes, advances, and miscellaneous property not used for railroad purposes, and located outside the State and having their situs outside the State of Kentucky, were on June 30th, 1912, as follows:

	Cost or Book Value.
Stocks	$5,033,167.12
Bonds	47,545,923.01
Cash	2,294,798.40
Notes	442,246.39
Advances	112,147.22
Miscellaneous Properties	446,473.61
	$55,874,755.75

and that on June 30th, 1912 there were no stocks, bonds, notes, or other intangible property in the State of Kentucky, or usable in said State in connection with the business or the transaction of the business of said Company.

Affiant further deposes and says that the properties above enumerated are exclusive of the stocks and bonds covering the physical railroads and properties operated by the Illinois Central Railroad Company at the time mentioned above.

(Signed) MARTIN P. BLAUVELT.

STATE OF ILLINOIS,
County of Cook, ss:

This day personally appeared before the undersigned a Notary Public in and for the State and County aforesaid, Martin P. Blauvelt, whose signature is attached thereto and made oath that the statements made in the foregoing affidavit are true to the best of his knowledge and belief.

Given under my hand this Nineteenth day of November, 1912.

[NOTARY SEAL.] (Signed) M. J. O'CONNELL,
Notary Public.

69 Illinois Central Railroad Company.

Statement showing nature of investment securities owned.

STATE OF ILLINOIS,
County of Cook, ss:

I, Martin P. Blauvelt, being duly sworn depose and say that I am the Comptroller of the Illinois Central Railroad Company and that in my office are kept the records of investment securities owned by the said Company, showing the nature and the value thereof and that I am a proper person to make this affidavit and that according to the said records the investment securities owned and the par value thereof as shown by the said records on the thirtieth day of June, 1912, are as shown upon the printed sheet hereto attached and that the contents of the said printed sheet are true and correct to the best of deponent's knowledge and belief.

(Signed) MARTIN P. BLAUVELT.

STATE OF ILLINOIS,
County of Cook, ss:

This day personally appeared before the undersigned a Notary Public in and for the State and County aforesaid, Martin P. Blauvelt, whose signature is attached thereto and made oath that the statements made in the foregoing affidavit are true to the best of his knowledge and belief.

Given under my hand this 18th day of November, 1912.

[NOTARY SEAL.] (Signed) M. J. O'CONNELL,
Notary Public.

TABLE 5.

Illinois Central Railroad Company.

Investment Securities Owned—Par Value.

Kind.	Pledged.	Unpledged.	Total.	Dividends and interest received.
Stocks:				
Illinois Central R. R. Co.	.....	$7,700.00	$7,700.00	$154.00
Central of Georgia Ry. Co.	.....	4,998,500.00	4,998,500.00	.....
Chicago, St. Louis & New Orleans R. R. Co.	.....	10,200.00	10,200.00	408.00
Dubuque & Sioux City R. R. Co.	.....	11,746,900.00	11,746,900.00	.....
Miscellaneous	.....	2,460,328.00	2,460,328.00	120,000.00
Total Stocks	.....	$19,223,628.00	$19,223,628.00	$120,562.00
Bonds:				
Illinois Central Gold Fours of 1953	.....	$71,000.00	$71,000.00	$2,840.00
Illinois Central, Louisville Division and Terminal Threes and a halfs of 1953	.....	2,100,000.00	2,100,000.00	73,500.00
Illinois Central, Litchfield Division Threes of 1951	.....	87,000.00	87,000.00	2,610.00
Illinois Central Interim Certificates, Fours, First Lien Equipment	.....	24,485,000.00	24,485,000.00	1,027,375.00
Cedar Rapids & Chicago R. R. Co., First Mortgage Gold Fives of 1935	‡ $830,000.00	.....	830,000.00	41,500.00
Cherokee & Dakota R. R. Co., First Mortgage Gold Fives of 1935	‡ 3,100,000.00	.....	3,100,000.00	155,000.00
Chicago, St. Louis & New Orleans R. R. Co., Gold Fives of 1951.	† 5,266,000.00	80,000.00	5,346,000.00	267,300.00
Chicago, St. Louis & New Orleans R. R. Co., Gold Bridge Fives of 1950	x 3,000,000.00	.....	3,000,000.00	150,000.00
Louisville, New Orleans & Texas Ry. Co., First Mortgage Fours of 1934	z16,832,000.00	.....	16,832,000.00	673,280.00
Louisville, New Orleans & Texas Ry. Co., Second Mortgage Income Fives of 1934	z 9,104,000.00	.....	9,104,000.00	.....
Louisville, New Orleans & Texas Ry. Co., Land Grant Noncumulative Income Sixes of 1934	z 6,553,276.90	.....	6,553,276.90	.....
Peoria & Pekin Union Ry. Co., Debenture Fives	.....	244,000.00	244,000.00	10,585.43

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Southern Illinois & Missouri Bridge Co., Fours of 1951	.....	600,000.00	600,000.00	24,000.00
Tennessee Central R. R. Co., Prior Lien Fours of 1934	.....	1,338,000.00	1,338,000.00	53,520.00
Yazoo & Mississippi Valley R. R. Co., First Mortgage Gold Fives of 1952	‡ 2,800,000.00	.....	2,800,000.00	140,000.00
Yazoo & Mississippi Valley R. R. Co., Gold Improvements Bonds and Scrip	.....	3,883,473.28	3,883,473.28	152,948.40
Central of Georgia Ry. Co., First Preference Income Bonds of 1945	.....	3,823,000.00	3,823,000.00	.....
Central of Georgia Ry. Co., Second Preference Income Bonds of 1945	.....	6,844,000.00	6,844,000.00	.....
Central of Georgia Ry. Co., Third Preference Income Bonds of 1945	.....	3,794,000.00	3,794,000.00	.....
Miscellaneous	.....	3,000.00	3,000.00	120.00
Total Bonds	$47,485,276.90	$47,352,473.28	$94,837,750.18	$2,774,578.83
Total Stocks and Bonds	47,485,276.90	66,576,101.28	114,061,378.18	2,895,140.83

The book value of the stocks and bonds listed above is $98,800,998.40, and on the balance sheet is included in the items:

Securities of proprietary, affiliated and controlled companies—pledged	$27,664,070.67
Securities of proprietary, affiliated and controlled compaanies—unpledged	18,471,116.39
Miscellaneous investments	37,070,305.60
Securities issued or assumed—held in treasury	26,751,080.00
Marketable securities	16,865,789.67

‡Pledged to secure in part Illinois Central Four per cent Bonds of 1952.
†Pledged to secure Illinois Central Three and a half per cent Sterling Bonds of 1950.
xPledged to secure Illinois Central Cairo Bridge Bonds of 1950.
zPledged to secure Illinois Central Four per cent Bonds of 1953.

71 State where the tangible property aforesaid is situated, assessed or liable to assessment: County, —; City, —; Town, —; number or name of taxing district or precinct, (See blueprint attached).

State the fair cash value of said tangible property, at the price it would bring at a fair voluntary sale: $—.

Give the amount of stock, bonds and other property located outside the State of Kentucky.

Bonds	$..	See statement and affidavits attached.
Cash	$..	
Other property	$..	
Total property outside the State	$..	
Stocks	$..	

Specify in detail the entire length of line or lines operated, owned, leased or controlled, in each county, city, town and taxing district in this State. (Give the length of line in each county, town or taxing district separately.) (See blueprint attached.)

State the total mileage operated, owned, leased or controlled in this State: 563.79 miles.

Also the total length of the entire line or lines, as above operated, owned, leased or controlled, as above, elsewhere than in this State: 3986.75 miles.

State the entire net and gross income or earnings received by the said corporation, company or association, in this State and out of this State, on business done in this State for twelve months next before June 30, 1902: Gross income, $7,447,362.91; Net income or earnings, $380,496.76.

State the entire gross and net income or earnings received by the said corporation, company or association, on business done in this State and elsewhere for the same length of time: Gross income, $64,624,235.15; Net income or earnings, $3,466,447.87.

(Signed) W. C. PARKER,
General Auditor.

STATE OF ILLINOIS,
Cook County, ss:

This day personally appeared before the undersigned, a Notary Public in and for the State and county aforesaid, W. C. Parker, whose signature is attached thereto, and made oath that the statements made in answer to the above interrogatories are true to the best of his knowledge and belief.

Given under my hand this 25th day of September, 1912.

(Signed) P. S. HANNAGAN,
Notary Public.

72 On the same day to-wit, on January 31, 1914 the following motion for Preliminary Restraining Order was filed herein, to-wit:

Motion for Preliminary Restraining Order.

In the District Court of the United States for the Eastern District of Kentucky.

ILLINOIS CENTRAL RAILROAD COMPANY, Plaintiff,

vs.

HENRY M. BOSWORTH, THOS. S. RHEA, and CARL F. CRECELIUS, Individually and as Constituting the Board of Valuation and Assessment of the State of Kentucky; Henry M. Bosworth, Auditor of Public Accounts for the State of Kentucky; G. B. Likens, Assistant Auditor of Public Accounts for the State of Kentucky; James Garnett, Attorney General for the State of Kentucky; C. H. Morris, First Assistant Attorney General of the State of Kentucky; M. M. Logan, Second Assistant Attorney General for the State of Kentucky; O. S. Hogan, Third Assistant Attorney General for the State of Kentucky; Victor A. Bradley, Commonwealth's Attorney for the Franklin Circuit Court, and W. C. Marshall, County Attorney of Franklin County, of the State of Kentucky, Defendants.

Comes the Illinois Central Railroad Company, plaintiff in the above entitled suit by Edmund F. Trabue, its counsel, and moves the Court to issue an injunction against the defendants and each of them, and against their agents, attorneys, employees or other representatives until the further order of the Court conformable to the prayer of plaintiff's Bill in this suit; and that a temporary restraining order issue immediately to continue until the motion for a preliminary injunction can be heard, and until the further order of the Court.

EDMUND F. TRABUE, *Counsel.*

73 Subpœna in Chancery as follows, issued in said cause on January 31, 1914, to-wit:

The President of the United States of America to Henry M. Bosworth, Thomas S. Rhea, Carl F. Crecelius, individually and as constituting the Board of Valuation and Assessment of the Commonwealth of Kentucky; Henry M. Bosworth, as Auditor of Public Accounts of the Commonwealth of Kentucky; G. B. Likens, as Assistant Auditor of Public Accounts of the Commonwealth of Kentucky; James Garnett, individually and as Attorney General of the Commonwealth of Kentucky; C. H. Morris, individually and as First Assistant Attorney General of the Commonwealth of Kentucky; M. M. Logan, individually and as Second Assistant Attorney General of the Commonwealth of Kentucky; O. S.
74 Hogan, individually and as Third Assistant Attorney General of the Commonwealth of Kentucky; Victor A. Bradley, individually and as Commonwealth's Attorney for the Fourteenth Judicial District, including Franklin County, Kentucky, and Wiley C. Marshall, individually and as County Attorney for Franklin County, Kentucky, Greeting:

You are hereby commanded to appear before our District Court of the United States of America for the Eastern District of Kentucky, at the Federal Court Hall in the city of Frankfort, on or before the twentieth day after the service hereof, to answer a Bill in Equity exhibited against them in our said court by Illinois Central Railroad Company, which you shall in nowise omit, under the penalty of the law.

Witness the Honorable A. M. J. Cochran, Judge of the District Court of the United States of America, and the seal of our said District Court hereto affixed, at the Clerk's office of said court, in Frankfort, this 31 day of January, A. D. 1914, and in the 139th year of our Independence.

Attest:

[SEAL.]

J. W. MENZIES,
C. D. C., W. K. D.
By M. VAN D. BELL,
His Deputy.

Answer or other defense is required to be filed in the Clerk's office on or before the twentieth day after service excluding the day thereof, otherwise the bill may be taken pro confesso.

J. W. MENZIES, *Clerk.*

75 Marshal's return on the foregoing Subpœna in Chancery is in words and figures as follows, to-wit:

Received this Process at Frankfort, Ky., on Feby. 3, 1914, and executed in full on said date by delivering a true copy hereof to H. M. Bosworth, as Chairman of the Board of Valuation and Assessment of the State of Ky.; a true copy hereof to each of the following: H. M. Bosworth, Thos. S. Rhea & C. F. Crecelius, individually and as constituting and being a member of the Board of Valuation and Assessment of the State of Ky.; a copy to H. M. Bosworth, Auditor of Public Accounts of the State of Ky.; a copy to G. B. Likens, Asst. Auditor of Public Accounts of the State of Ky.;

a copy to James Garnett, Atty. Genl. of the State of Ky.; a copy to C. H. Morris, 1st Asst. Atty. Genl. for the State of Ky.; a copy to M. M. Logan, 2nd Asst. Atty. Genl. of the State of Ky.; a copy to O. S. Hogan, 3rd Asst. Atty. Genl. of the State of Ky.; a copy to Victor A. Bradley, Commonwealth's Atty. for Franklin Circuit Court, and a copy to W. C. Marshall, County Atty. of Franklin County of the State of Ky. All of the above named being served at Frankfort, Ky. except Victor A. Bradley who was served at Georgetown, Ky.

A. B. PATRICK,
U. S. Marshal.
By N. I. McDANIEL, *D. M.*

Feb'y. 3, 1914.

Clerk's endorsement on the foregoing Subpœna in Chancery is in words and figures as follows, to-wit:
Returned and filed February 6, 1914, J. W. Menzies, U. S. Clerk.

Heretofore, to-wit, on January 31, 1914 a restraining order was made and entered herein, same being in words and figures as follows, to-wit:

76 In the District Court of the United States for the Eastern District of Kentucky.

No. 769.

ILLINOIS CENTRAL RAILROAD COMPANY, Plaintiff,
versus
HENRY M. BOSWORTH, THOMAS S. RHEA, and CARL F. CRECELIUS, Individually and as Constituting the Board of Valuation and Assessment of the State of Kentucky; Henry M. Bosworth, Auditor of Public Accounts of the State of Kentucky; G. B. Likens, Assistant Auditor of Public Accounts of the State of Kentucky; James Garnett, Attorney General of the State of Kentucky; Charles H. Morris, First Assistant Attorney General of the State of Kentucky; M. M. Logan, Second Assistant Attorney General of the State of Kentucky; O. S. Hogan, Third Assistant Attorney General of the State of Kentucky; Victor A. Bradley, Commonwealth's Attorney for the Franklin Circuit Court, and W. C. Marshall, County Attorney of Franklin County, of the State of Kentucky, Defendants.

Restraining Order.

Entered January 31, 1914.

77 Plaintiff, upon the filing of its Bill herein, having moved the court to issue an injunction herein in accordance with the prayer of its Bill, the hearing of said motion is fixed for the seventh

day of February, 1914, at 2 o'clock in the court room of this court in the city of Frankfort, State of Kentucky, and it appearing by the averments of plaintiff's Bill and the exhibits therewith filed and documents therein referred to that there is danger of irreparable loss or damage being caused the plaintiff before the hearing of its application for a preliminary injunction can be had unless a temporary restraining order issue herein, as prayed in plaintiff's said Bill;

It is consequently now ordered that a temporary restraining order issue enjoining and restraining the defendants, Henry M. Bosworth, Thomas S. Rhea and Carl F. Crecelius, individually and as constituting the Board of Valuation and Assessment of the State of Kentucky, and the defendant, Henry M. Bosworth, Auditor of Public Accounts of the State of Kentucky, and the defendant, G. B. Likens, Assistant Auditor of Public Accounts of the State of Kentucky, from apportioning or attempting to apportion to any counties, cities, towns, or taxing districts, any assessment of plaintiff's franchise for taxation in the State of Kentucky for the year 1913, based upon any greater assessment or valuation of plaintiff's franchise or of the plaintiff for franchise taxation than for the sum of six million dollars ($6,000,000.00).

And enjoining and restraining said Henry M. Bosworth, Auditor of Public Accounts aforesaid, and the defendant G. B. Likens, Assistant Auditor aforesaid, to refrain from certifying any assessment or valuation of plaintiff for franchise taxation for the year 1913, in excess of six million dollars ($6,000,000.00), and from certifying any part of any assessment or valuation of plaintiff's franchise out of any total amount in excess of said sum to the County Clerk or other officer of any county in the State of Kentucky;

78

And enjoining and restraining said Bosworth, Auditor as aforesaid, and said Likens, Assistant Auditor as aforesaid, from entering in account as a demand payable at the Treasury of said Commonwealth of Kentucky any amount of taxes based on any assessment of plaintiff's franchise for taxation for the year 1913, at a greater amount than six million dollars ($6,000,000.00), and from making any report to the Attorney General of said Commonwealth of any alleged delinquency arising from the failure of plaintiff to pay taxes to said Commonwealth based on any assessment for franchise taxation for the year 1913, at a valuation greater than the amount aforesaid, and from instituting or causing to be instituted proceedings of any kind against the plaintiff because of plaintiff's failure or refusal to pay taxes for the year 1913, based on an assessment of total value in excess of the amount aforesaid; and enjoining and restraining the defendants, Henry M. Bosworth, G. B. Likens, James Garnett, Charles H. Morris, M. M. Logan, O. S. Hogan, Victor A. Bradley and W. C. Marshall, and each of them from instituting, prosecuting or causing to be instituted or prosecuted any proceeding or proceedings against plaintiff by indictment, civil action or otherwise because of any alleged delinquency or failure to pay any taxes, penalty or interest on any

assessment or valuation for franchise taxation at any greater valuation than the amount aforesaid;

This restraining order is to remain in full force and effect until the hearing and determination of plaintiff's motion for a preliminary injunction, and until the further order of this court in the premises.

79 On the same day to-wit, January 31, 1914, certified copies of the foregoing restraining orders were made and delivered to the Marshal of the Eastern District of Kentucky and were returned and filed on February 6, 1914 with the following return endorsed thereon, to-wit:

Received this Restraining Order at Frankfort, Ky., on Feb'y 3, 1914, and executed in full on said date by delivering a true copy hereof to H. M. Bosworth, as Chairman of the Board of Valuation and Assessment of the State of Ky.; a true copy hereof to each of the following: H. M. Bosworth, Thos. S. Rhea & C. F. Crecelius, individually and as constituting and being a member of the Board of Valuation and Assessment of the State of Ky.; a copy to H. M. Bosworth, Auditor of Public Accounts of the State of Ky.; a copy to G. B. Likens, Ass't Auditor of Public Accounts of the State of Ky.; a copy to James Garnett, Att'y Gen'l of the State of Ky.; a copy to C. H. Morris, 1st Ass't Att'y Gen'l for the State of Ky.; a copy to M. M. Logan, 2nd Ass't Att'y Gen'l of the State of Ky.; a copy to O. S. Hogan, 3rd Ass't Att'y Gen'l of the State of Ky.; a copy to Victor A. Bradley, Commonwealth's Att'y for Franklin Circuit Court, and a copy to W. C. Marshall, County Att'y of Franklin County of the State of Ky. All of the above named being served at Frankfort, Ky., except Victor A. Bradley, who was served at Georgetown, Ky.

A. B. PATRICK,
U. S. Marshal.
By N. I. McDANIEL, *D. M.*

Feb'y 3, 1914.

80 On February 6, 1914 the following letter signed by Bosworth, Rhea and Crecelius and dated January 30, 1914 was filed herein, to-wit:

FRANKFORT, KENTUCKY, January, 30, 1914.

Trabue, Doolan & Cox, Attorneys for Illinois Central, Louisville, Kentucky:

GENTLEMEN: Replying to the paper which you filed with the Auditor of Public Accounts on January 26, 1914, relative to the franchise tax valuation of the Illinois Central Railroad, we note that you request this Board to expunge from the order of the Board fixing the value of the franchise of this corporation, the following words: "No stenographic notes of the evidence were taken, and the evidence giving on the hearing was not reduced to writing."

We note that you say that "there was no such evidence given by this company to the Board, nor heard by the Board, but that all

the evidence is contained in the exhibits referred to in the entries or records, and that the argument heard by the Board was based solely upon such evidence."

The word "evidence" as used in the statement which you ask to be expunged, refers to the statement made before the Board by Mr. Tarbet. It is probably true that Mr. Tarbet was not sworn, and that he appeared for the purpose of and did make an argument, but the words used by Mr. Tarbet were considered by the Board, and it is the statements of Mr. Tarbet which are referred to and called evidence. Probably we should have used the word statement instead of evidence. However, we will say that we do not think this of sufficient importance to cause us to change the record which we have made.

Yours truly,

H. M. BOSWORTH,
Auditor of Public Accounts.
THOS. S. RHEA,
Treasurer.
C. F. CRECELIUS,
Secretary of State.

81 On February 20, 1914 the following order was entered herein, to-wit:

In the District Court of the United States for the Eastern District of Kentucky at Frankfort, Kentucky.

#769.

In Equity.

ILLINOIS CENTRAL RAILROAD COMPANY, Plaintiff,
vs.
H. M. BOSWORTH, THOMAS S. RHEA, and C. F. CRECELIUS, Individually and as Constituting the Board of Valuation and Assessment of the State of Kentucky; H. M. Bosworth, Auditor of Public Accounts of the State of Kentucky; G. B. Likens, Assistant Auditor of Public Accounts of the State of Kentucky; James Garnett, Attorney General of the State of Kentucky; C. H. Morris, First Assistant Attorney General of the State of Kentucky; M. M. Logan, Second Assistant Attorney General of the State of Kentucky; O. S. Hogan, Third Assistant Attorney General of the State of Kentucky; Victor A. Bradley, Commonwealth's Attorney for the Franklin Circuit Court; and W. C. Marshall, County Attorney of Franklin County, of the State of Kentucky, Defendants.

Order Granting Temporary Injunction.

This cause came on to be heard, after due notice to defendants, upon plaintiff's motion for a temporary injunction and upon the

pleadings, exhibits, and affidavits filed by the parties herein, and it was agreed between counsel for plaintiff and counsel for defendants that the questions of law involved in the motion having been
82 recently argued in this court by the same counsel, plaintiff's present motion for a temporary injunction should be submitted upon the pleadings, exhibits, and affidavits filed by the parties, and thereupon, upon consideration thereof, the Court being sufficiently advised, it was ordered, adjudged and decreed as follows, viz:

(1) That the plaintiff, Illinois Central Railroad Company, be and it is hereby granted a temporary injunction in accordance with its said motion and the prayer of its bill of complaint. This injunction is granted, however, upon the condition that Complainant will pay to the counties, cities, towns and taxing districts the amount of taxes due on the total valuation of $6,000,000.00 within 30 days from this date and the Auditor is permitted to certify to the said counties, cities, towns, and taxing districts the amount due on the valuation aforesaid.

(2) That the defendants, H. M. Bosworth, Thomas S. Rhea, and C. F. Crecelius, Individually, and as constituting the Board of Valuation and Assessment of the State of Kentucky, and H. M. Bosworth, Auditor of Public Accounts of the State of Kentucky, and G. B. Likens, Assistant Auditor of Public Accounts of the State of Kentucky, are enjoined and commanded to refrain from apportioning or attempting to apportion to counties, cities, towns or taxing districts any assessment of plaintiff's franchise for taxation in the State of Kentucky for the year 1913 based upon a greater total assessment or value of said franchise than $6,000,000.00.

(3) That said H. M. Bosworth, Auditor of Public Accounts of the State of Kentucky, and said G. B. Likens, Assistant Auditor of Public Accounts of the State of Kentucky, are enjoined and commanded to refrain from certifying any assessment or valuation of plaintiff's franchise for taxation in the State of Kentucky for the year 1913 in excess of $6,000,000.00 total, and from certify-
83 ing any part of any assessment or value of plaintiff's franchise out of any total in excess of said amount to the county clerk of any county in the State of Kentucky, in which plaintiff's lines are situated, or to any other officer.

(4) That said H. M. Bosworth, Auditor of Public Accounts of the State of Kentucky, and said G. B. Likens, Assistant Auditor of Public Accounts of the State of Kentucky are enjoined and commanded to refrain from entering in account as a demand payable at the Treasury of the State any amount of taxes based on any assessment of plaintiff's franchise for taxation for the year 1913 in the State of Kentucky at a greater total amount than $6,000,000.00 and to refrain from making any report to the Attorney General of any alleged delinquency arising from the failure of plaintiff to pay taxes to the State of Kentucky, based on any assessment of its franchise for taxation in the State of Kentucky for 1913 at a valuation greater than the aforesaid amount, and to refrain from causing proceedings of any kind to be instituted against plaintiff because of

the failure or refusal of plaintiff to pay taxes in Kentucky for the year 1913, based on an assessment of total value in excess of the aforesaid amount.

(5) And that defendants, H. M. Bosworth, G. B. Likens, James Garnett, C. H. Morris, M. M. Logan, O. S. Hogan, Victor A. Bradley, and W. C. Marshall, are enjoined and commanded to refrain from instituting or prosecuting any proceeding against plaintiff either by indictment or civil action to recover taxes or penalties because of any alleged delinquency of plaintiff in failing to pay taxes based upon an assessment or valuation of its franchise for taxation in the State of Kentucky at any greater value than the amount aforesaid.

84 (6) That this temporary injunction shall be and remain in full force and effect until the further order of the Court herein.

(7) That to all of the foregoing order the defendants and each of them are given an exception.

Done at Chambers at Maysville, Kentucky, this 20th day of February, 1914.

85 On February 28, 1914, the following order was entered herein, to-wit:

#769

ILLINOIS CENTRAL RAILROAD COMPANY
vs.
H. M. BOSWORTH et al.

On motion of the defendants in the above entitled case their time for filing answer herein, is now and hereby extended until April 1, 1914.

86 On the same date the following motion was filed herein, to-wit:

District Court of the United States for the Eastern District of Kentucky.

ILLINOIS CENTRAL RAILROAD COMPANY, Complainant,
vs.
H. M. BOSWORTH, etc., Defendants.

Motion for Time to File Answer.

Come the defendants and move this Honorable Court to give time until April 1, 1914, to file answer herein.

For reason the defendants say that they have been engaged in the preparation of answer in suit filed by this complainant against H. M. Bosworth, etc., enjoining the 1912 assessment, and that they are now engaged in preparing said case for trial and their time is

so taken up in said preparation that they cannot properly prepare an answer before the date above mentioned.

For further grounds, the defendants say that the bill herein is unusually long and that the preparation of the answer will require much time.

JAMES GARNETT,
Attorney General.
M. M. LOGAN,
Asst. Attorney General.

87 On March 10, 1914, the following order was entered herein, to-wit:

#769.

ILLINOIS CENTRAL RAILROAD COMPANY
vs.
H. M. BOSWORTH et al.

By agreement of the respective parties in the foregoing case by their attorneys it is now continued until April 16, 1914, at 9:30 A. M.

88 On March 31, 1914, defendant filed answer herein as follows, to-*wit*:

In the District Court of the United States for the Eastern District of Kentucky.

No. 769.

ILLINOIS CENTRAL RAILROAD COMPANY, Plaintiff,
versus.
HENRY M. BOSWORTH, THOMAS S. RHEA, and CARL F. CRECELIUS, Individually and as Constituting the Board of Valuation and Assessment of the State of Kentucky; Henry M. Bosworth, Auditor of Public Accounts of the State of Kentucky; G. B. Likens, Assistant Auditor of Public Accounts of the State of Kentucky; James Garnett, Attorney General of the State of Kentucky; Charles H. Morris, First Assistant Attorney General of the State of Kentucky; M. M. Logan, Second Assistant Attorney General of the State of Kentucky; O. S. Hogan, Third Assistant Attorney General of the State of Kentucky; Victor A. Bradley, Commonwealth's Attorney for the Franklin Circuit Court, and W. C. Marshall, County Attorney of Franklin County, of the State of Kentucky, Defendants.

Answer.

(Filed M'ch 31, 1914.)

89 1.

The defendants for answer to paragraph 1 of complainant's bill admit that the allegations therein are substantially true.

2.

The defendants for answer to paragraph 2 of complainant's bill of complaint admit that the allegations therein are substantially true.

3.

The defendants for answer to paragraph 3 of complainant's bill admit that the allegations therein are substantially true.

4.

The defendants for answer to paragraph 4 of complainant's bill admit that the allegations therein are substantially true.

5.

For answer to the 5th paragraph of complainant's bill, the defendants admit that the allegations therein are substantially true, except that the defendants deny that the recital in the findings of the Board that "no stenographic notes of the evidence were taken and the evidence given on this hearing was not reduced to writing" is
90 misleading or deceptive, or that in so far as it intimates that evidence was given on said hearing but not reduced to writing, is wholly unfounded or untrue, or that defendants so knew; but defendants state that it is true that no witnesses were sworn or affidavits filed other than as stated in the bill, but they aver that the representatives of the complainant appeared before said Board and made certain statements and produced certain records which they insisted should be considered by the Board in arriving at its conclusion, and that the language referred to above related to such statements made by the representatives of said road and such records as were at the time produced, as well as such other facts as were stated by such representatives before the Board, for the purpose of having the Board consider same for the purpose of arriving at its conclusion; and further the defendants deny that the said Board did not call upon complainant for or request that any other evidence or any explanation of any of the affidavits, reports or documents introduced by complainant, or intimate to the complainant, that they failed to understand them or any of them.

6.

For answer to paragraph 6 of complainant's bill, the defendants deny that the Board of Valuation and Assessment after the hearings as set out in the bill, promptly turned over to John L. Rich all the papers and documents aforesaid, or any of them, in order that
91 he, the said Rich, might make a valuation of assessment of complainant's property in Kentucky for franchise taxation, and they deny that the said Rich forthwith carried said papers and documents to his home in Covington, Ky., and made the assessment and valuation, or that he composed or wrote the record of said assessment, except in so far as he was directed so to do by said Board of Valuation and Assessment, or that he set out exposition or reasons

for said valuation or assessment filed by said defendants with the Secretary of the said Board as aforesaid, except as he was directed so to do by said Board, or that thereupon the said Rich returned to defendants at the State Capitol the record or opinion or exposition or reasons for such assessment filed as aforesaid, or that said defendants thereupon adopted or promulgated said assessment and said opinions and reasons therefor; but the defendants allege that said Board first made its finding and arrived at its conclusions and determined its exposition or reasons, if the same might be so called, and after having done so, the said Board directed the said Rich to prepare or reduce to writing said findings in accordance with the directions of the Board, and that said Rich did so, because at the time, he was acting for said Board, and was acting under the specific directions of said Board, and that the findings and conclusions which were entered of record were first determined upon by the Board before the said Rich was directed to write same, and that after said Rich had made a draft of the findings and opinion of said Board, he submitted the same to the Attorney General, and that the Attorney General
92 examined same, and after an examination thereof, the record was submitted to the Board, and upon examination the Board found that same conformed to its findings and directions and embodied that which it had directed to be prepared, whereupon the same was entered as the judgment of the Board, and the complainant was notified thereof. The defendants deny that said Rich still retains the said report made by said complainant to said Board and all the affidavits and documents filed with the said report, or affidavits, or other documents when they approved and adopted the said record or opinion prepared as aforesaid, and they deny that said Board did not have any figures or memorandum whereby it could verify or even examine the calculations or conclusions set forth by the said Rich as aforesaid in said finding, and they deny that said Rich retained all the papers, documents and report filed by complainant at his home in Covington until long after, or until any time after the said defendants promulgated said assessment and the said exposition thereof, or until complainant, through its counsel, wired to said Rich as a telegram directed to him at Covington, Kentucky, requesting him to return the said papers so that complainant might obtain from the Secretary of said Board a copy thereof to file with its bill of complaint. They deny that the said defendants unlawfully delegated to the said Rich the duty of making the said assessment or valuation, or that the said Rich so made same, or made same at all, or that same is not in law the act of said defendants as the Board of Valuation
93 and Assessment, or that same is not binding upon the complainant as such.

7.

For answer to paragraph 7, the defendants admit that the compainant, through its representatives, exemplified to the defendants what said representatives claim to be the usual and virtually all-known methods of computing the valuation of railroad franchises, as well for the year 1912 as for the year 1913, which methods are

referred to in Exhibit "B" and Exhibit "C" of Exhibit "Y" filed as a part of the bill, and they admit that under the claim of said representatives it was shown that the value of complainant's property in the State of Kentucky in the various instances would not exceed the amounts set out in this paragraph, but the defendants deny that the representatives of said company demonstrated that by the method of valuation known as the earnings method, the total capital stock value of complainant apportionable to Kentucky, could not exceed $24,568,690.00; or that by the method known as the reproduction value method, such total capital stock apportionable to Kentucky could not exceed $28,563,537.00; or that by the stock and bonds method the proportion of the total capital stock apportionable to Kentucky could not exceed $26,855,867.00; or that by the consideration of the footings of complainant's balance sheet method, the proportion of such total capital stock apportionable to Kentucky could not exceed $27,862,595.00; or that by combining or averaging the
94 results of such methods, it was shown that the proportion of such capital stock apportionable to Kentucky could not exceed $26,960,172.00, but they admit that according to the calculations submitted by the representatives of said company, that these results were arrived at by such methods as are shown in such exhibits, but the defendants deny that in the consideration of this matter, the representatives of the company correctly ascertained the total value of complainant's capital stock within and without the State of Kentucky. The defendants admit that the representatives of said road did produce to said Board a certified copy of the bill and amended bill filed by this complainant in this court in suit No. — styled Illinois Central Railroad Company against A. T. Siler et al., showing by said bill the value of complainant's property in Kentucky to be $26,000,000.00, and by said amended bill to be $28,763,277.77, but the defendants say that the Board realized that this st[illegible]ement was made by complainant in its bill of complaint in the [illegible]t aforesaid eight or nine years ago, and that the property of complainant has increased greatly in value since said complaint was filed, and the defendants deny that any of the statements referred to correctly show the total value of complainant's property in the State of Kentucky at the time the assessment complained of was made, and they deny that it was shown that the maximum amount which could by any legitimate method be fixed as the franchise tax valuation of complainant's property in Kentucky was the sum mentioned in complainant's amended bill in said Siler case, or
95 that said sums respectively equalized at 60 per cent demonstrated that by legitimate or authorized methods of valuation, no sum could be fixed as the franchise tax valuation of complainant's property exceeding the sum represented by 60 per cent of the sums aforesaid, or that the sums so arrived at as set out in this paragraph of complainant's bill are correct, and they deny that in suit No. 731, aforesaid pending in this court, that this Honorable Court adjudged that the taxing officers of the State of Kentucky habitually, intentionally, systematically or generally assessed the property of individuals or of private corporations in the State of Kentucky at 60

per cent or less of the fair cash value of said property which it would bring at a fair, voluntary sale, and the defendants state that the court in passing upon this question only had under consideration a motion for a preliminary injunction, and that the allegations of said bill and the proof heard in support thereof was only considered by the court for the purpose of determining whether the complainant should be granted such injunction. The defendants deny that the taxing officers of the State of Kentucky have for years last past habitually, intentionally, systematically or generally assessed property of individuals and of private corporations at not exceeding 50 per cent of the fair, cash value of said property which it would bring at a fair and voluntary sale thereof. They admit that the United States census report for the year 1910 shows the value of all farms and farm property including lands, live stock and implements,

in Kentucky to be of the value of at least $773,790,880.00,
96 and that said property was for the year 1911, as appears by

the report of the Kentucky Board of Equalization, assessed at $399,040,313.00, and that said property comprised 43 per cent of the total taxable property of the State of Kentucky, but the defendants state that they have no knowledge or information sufficient to form a belief as to whether the report of the Census Bureau is correct, or whether the report of the taxing officers is correct, but they deny that all real estate in the State of Kentucky is assessed at only 51 6/10 per cent, and they aver that in thousands of instances the individual parcels of real estate which are assessed, are assessed at 100 per cent of their fair cash value, and they deny that all private corporations are assessed at less than 100 per cent of their real value, but on the other hand, they aver that many private corporations are assessed at 100 per cent of their real value, and they deny that the census report of the United States is any criterion to govern in arriving at the correct value of property in the State of Kentucky. They say that they have no knowledge or information sufficient to form a belief as to whether or not in 1900 similar property was assessed at 63.47 per cent of its value, or that the United States Census aforesaid shows the taxable property in Kentucky in 1904 was assessed at 48.33 per cent of its actual value, or that such ratio of assessed actual value was continually declining so that the ratio of equalization adopted by complainant, to-wit, 60 per cent, in the tables or methods of computing valuation which complainant propounded to defendants as aforesaid, was too high, or that complain-

ant was entitled to a ratio of equalization at 50 per cent in-
97 stead of 60 per cent, and they deny that said Rich, acting on

behalf of said defendants, adopted and used according to the claims made in the said Coulter record or opinion, at the rate of 80 per cent instead of 50 per cent or 60 per cent, but defendants aver that the property of complainant in the State of Kentucky is not assessed at as much as 80 per cent of its true cash value. Further, the defendants say that the Constitution of the State of Kentucky requires all property subject to taxation to be assessed for taxation at its full value estimated at the price it would bring at a fair, voluntary sale, and that these defendants have no right under the law to

assess said property other than as is provided in the Constitution, and further, they state that they have no knowledge or information as to whether property is assessed at less than its fair, cash value in this State, but they say it is probable that some property is assessed at less than its fair, cash value estimated at the price it would bring at a fair voluntary sale, but that these defendants have no control over such assessment or over any assessment, except such as are required to be assessed by it, and that the actions of the taxing officers of the State of Kentucky other than these defendants, is in nowise binding upon these defendants, and that the acts of these defendants of assessing property can not be controlled by the acts of other taxing officers in this State over whom these defendants have no control.

8.

98 The defendants for answer to paragraph 8 of complainant's bill, deny that said Rich made the valuation or assessment complained of, and they deny that in making said valuation and in composing said report or opinion indicating the basis thereof, he arbitrarily ignored the uncontradicted evidence offered by complainant to said defendants, or that same was made with the design and determination to make the highest possible assessment which could be invented, or that the net income of complainant for the year ending June 30, 1912, was ignored. They deny that said Board perfunctorily adopted the said valuation and opinion or report, but they say that said Board made said valuation and assessment and opinion or report after a careful and thorough consideration of all the evidence introduced by complainant, and after having considered all matters in connection with the assessment of complainant's franchise, and they deny that the said Board arbitrarily ignored the uncontradicted evidence offered by complainant, or that the evidence offered by complainant was uncontradicted because they aver that the evidence offered by complainant was contradictory within itself, or that said Board made said assessment with the design or determination to make the highest possible assessment which could be invented, or ignored the net income of complainant for the year ending June 30, 1912. They deny that in considering

99 the cost of reproduction method they ignored the excess value of complainant's tangible property outside the State over the value of such property inside the State, but aver that said Board considered this particular matter and ascertained that there was no such excess value, and the defendants now deny that there is any such excess value. They deny that the item of net income for the current year is universally considered or has been universally considered by said Board and its predecessors and by other taxing authorities in using the net earnings method of franchise assessment of valuation. They admit that it is true that this Honorable Court has decided that any excess value outside the State of Kentucky should be deducted from the value of complainant's total capital stock. They deny that said Board added to the total cost of reproducing such tangible properties the cost or book value of

the stocks and bonds, cash, notes, advances and miscellaneous properties outside the State, aggregating $55,874,755.75, and they deny that there are any such values to this amount or any other amount outside of the State of Kentucky, and they deny that the affidavit of Martin B. Blauvelt shows this to be true, or that if such construction may be placed upon the statements in said affidavit, they deny that such statements are true, and they deny that there are any such values outside of the State not usable in the State of Kentucky in connection with the business of complainant, or that same, if any, are not properly a part of complainant's total capital stock to be considered in arriving at the value of complainant's property in the State of Kentucky, and they deny that such stocks and
100 bonds, if any, are exclusive of the stocks and bonds covering the physical railroads and properties operated by complainant. They deny that in considering the stock and bonds plan or method of valuation, the said Board intentionally, or at all, ignored the common knowledge of the commercial world as to rate of interest and computed the value of the debenture stocks and bonds mentioned in complainant's report and in defendants' said method of computation of valuation, at par, when said securities were worth, according to said rates as was commonly known in the commercial world and shown in complainant's said method of computation, only such sum as 5 per cent of said basis would indicate, aggregating $43,310,120.00 less than the sum reached by the said Board, or that any such sum was so reached by said Rich, except under the direction of said Board. They deny that in constructing and earnings plan or method of valuation, the Board apparently through misapprehension, or at all, capitalized the gross corporate income instead of the operating income, or that they capitalized any income except such as was the net income of complainant engaged in the business of a common carrier, and they deny that the gross corporate income is the same operating income and other income as used by complainant in its bill, or that the other income referred to in said bill is the interest on securities and other items not appertaining to operation or transportation, and they deny that the Board capitalized any income that was not appertaining to operation or transportation, and they deny that said Rich did either or any of these things, except as he acted under the immediate
101 directions of said Board, and they deny that said Board, or the said Rich acting under the direction of said Board designedly selected for capitalization the income for years when the company's income was especially large, selecting such years arbitrarily and at pleasure, or that said Rich acting for said Board, or that said Board intentionally, or at all, ignored the earnings of complainant for the year for which the valuation was being made, and they deny that said Board perfunctorily adopted the said work of the said Rich, but they say that such work as was done by said Rich was first approved and directed by the Board. They deny that the years selected by the said Rich were 1909, 1910 and 1911, or that he took the gross corporate income for such years, including as aforesaid the operating income and other income, and struck an average thereof,

and capitalized the result at 6 per cent so as to include in his valuation all the properties of the company, tangible and intangible, as well outside as inside the State of Kentucky, deducting from the total thereof $55,874,755.00, regardless of any evidence of the productivity of the non-operative property represented thereby, or that if he adopted such method the same was worthless for any purpose, or that same was adopted solely because of the excessive amount to be realized thereby, but the defendants say that they are in nowise concerned with what the said Rich did as an individual, and that if he did the things herein just detailed without having done them under the specific directions of the Board and with the approval of the Board and without their having been thereafter
102 adopted by the Board, that the act was his individual act with which the Board is not concerned. The defendants deny that there is any excuse given in the opinion of the Board or basis for valuation, but say that reasons are given therefor, and they deny that there is any remarkable phenomenon of ignoring earnings for the current year, but they state that it is true that in the findings of the Board, it points out the reasons why the income for the current year was not a proper basis upon which to determine the true value of complainant's property, and that the reasons given therefor are fully set out in said findings and judgment of the Board, and that said judgment of the Board, opinion, record, findings, reasons or whatever the same may be termed, is fully shown in the judgment of the Board which is entered at full on the records of the Board. The defendants deny that the Board made use of the earnings of the next previous year because the earnings for said year were unusually large, and they deny that said earnings were unusually large, being $23,883.75 more than for the next previous year, and $— more than for the year next prior thereto, and they deny that it appears that the said Board or that said Rich acting for said Board and under its directions, arbitrarily selected for consideration and capitalization the years when the earnings were greatest, or ignored arbitrarily the years when they were unsatisfactory, and they deny that either of these things was done. They deny that the "other income" for the year ending June 30, 1911, was only — per cent greater than the "other income" for the
103 year ending June 30, 1912, or that such income for the year 1911 was $6,742,438.50, or for the year 1912, $5,403,584.66, or that the operating income for the former year was $14,393,045.90, or for the latter year only $7,812,718.60, or only 55 per cent thereof, and they deny that it appears that the said Board, or that said Rich acting under the directions of said Board, arbitrarily pursued a plan or method of valuation or assessment obviously worthless, or at all worthless, or solely for the purpose of reaching a large amount of money as a result, regardless of real value, and they deny that said valuation so made by the said Board or by the said Rich under the directions of said Board was perfunctorily adopted by the said Board and they deny that the valuation and assessment so fixed upon complainant's franchise for the current year is excessive exorbitant or fraudulent, or made regardless of the evidence or the facts shown to

the Board, or that they intentionally ignored the excess value of complainant's tangible property outside the State, or denied the plaintiff the benefit of equalization to which it was entitled, all to the great and irreparable damage of complainant, or to any damage of complainant, or that complainant was or is by the said Board deprived of its property without due process of law, or denied the equal protection of the law, in violation of the Fourteenth Amendment to the Constitution of the United States, or in violation of the Constitution of the State of Kenucky, or in disregard of the laws of said State, and they deny that the complainant has any
104 reason or grounds to set up or rely upon the protection of said Federal and State Constitutions and laws, or either of them. The defendants say that in making the assessment of complainant's franchise for the current year, they took into consideration all reports made by the complainant to the Auditor which were purposely made for the purpose of taxation, and that they gave full and fair consideration to all the evidence introduced by the complainant before said Board, and that they gave due and full consideration to all statements and representations made to the Board by the representatives of said complainant, and that after a consideration of all of these matters, in accordance with the laws of the State of Kentucky in the exercise of a reasonable and honest judgment, the Board arrived at the conclusion that the value of complainant's franchise in the State of Kentucky for the year for which the assessment was made was as fixed by the final judgment of said Board, and that in fixing said valuation at the sum mentioned therein, the Board gave due consideration to all claims of the complainant that other property in the State was assessed at less than its fair, cash value, and dealt more liberally with complainant than the laws of Kentucky would justify if strictly enforced, and that the amount fixed as the value of complainant's property in the State of Kentucky is just and equitable, and that a far less sum than the actual value of said property estimated at a price it would bring at a fair, voluntary sale.

9.

105 For answer to paragraph 9 of complainant's bill, the defendants deny that no legitimate method of franchise tax valuation shows such value of complainant's property in Kentucky to exceed the sum asserted as the value thereof in complainant's amended bill in said Siler case, or that 60 per cent thereof is only $17,260,966.66, or that 50 per cent thereof is $14,381,638.88, that is, that 60 per cent of the fair cash value of complainant's property in the State of Kentucky, or 50 per cent of the fair cash value of complainant's property in the State of Kentucky does not give the results mentioned, and they deny that either 50 per cent of the fair cash value or 60 per cent of the fair cash value, or any per cent of the fair cash value other than 100 per cent thereof, is the correct basis upon which the assessment of complainant's property should be made. They deny that the assessment or valuation promulgated by the defendants is exorbitant, unwarranted or fraudulent, or that

the defendants have intentionally denied to complainant the benefit of equalization to which it is entitled, or that it is entitled to any equalization, or that the defendants have denied to complainant the benefit of the deduction of the excess value of tangible property per mile outside the State over that inside the State, as appears by the affidavit of A. S. Baldwin filed with said Board, and they deny that the affidavit of said A. S. Baldwin shows that there is any such excess value when properly construed, or that same does so show any excess value. The defendants deny that the statements in
106 said affidavit are true, and they deny that by the second method of computation of franchise tax valuation exhibited to said Board by complainant is uncontradicted, or that said affidavit of A. S. Baldwin is uncontradicted. They deny that the defendants deliberately, or at all, ignored the common knowledge of interest rates, or arbitrarily assessed the debentures and outstanding funded debts mentioned in complainant's third method, at par, when it was a matter of common knowledge that said debentures and funded debt were not and could not possibly be worth par, or any sum exceeding the sum fixed by complainant in said third method of computation. The defendants deny that the value of complainant's terminal properties alone, computed upon a basis of cost of reproduction, situated in the cities of Chicago, New Orleans and Memphis exceed $136,000,000.00, or that there are no terminals of corresponding value or importance in the State of Kentucky, and they aver that said terminals and the use thereof go to give value throughout all the miles of complainant's entire system of railroad, and without such terminals the value of complainant's property in Kentucky would be greatly reduced. The defendants deny that there is any error, or was any error on the part of said Board or said Rich acting under the directions of said Board, in computing the value of complainant's property in Kentucky upon an income basis, or that in capitalizing the item "other income" as shown by the record prepared by the Board, or the said Rich under the direction of the Board, what was capitalized was not a
107 net item but a gross item, or that the item so capitalized as net income was only subject to correction by making many corresponding deductions upon the other side of the account, or that any or all of these things were ignored by the said Rich acting for the Board and under the directions of the Board, or by said Board itself, or that the said item "other income" includes a very large sum of interest on securities owed by the complainant to itself and held in its treasury and not in the hands of the public, producing a purely fictitious income which has no existence whatever except as a bookkeeping item, and they deny that any part of the income which was capitalized by the Board was a fictitious income, or an income which has no existence, or which is only a bookkeeping item, or that any such will appear from the annual reports of the complainant used by the defendants, or from the official reports of the State of Kentucky, or that the item "other income" included by the defendants in their computation is utterly worthless, or worthless at all as a factor in valuation, or is misleading or deceptive or

used apparently under misapprehension or in ignorance of its effect.

10.

For answer to the tenth paragraph of complainant's bill, the defendants admit that the Board of Valuation and Assessment assessed complainant's property in Kentucky for franchise taxation for the year 1905 at $4,517,940.00; for the year 1909, at $4,-
108 509,680.00; for the year 1910, at $4,228,425.00, and for the year 1911, at $4,510,320.00, but they state that said assessments were erroneous and made under a misapprehension of the facts and upon false representations and false reports made by complainant to the Board of Valuation and Assessment for these years, and that the findings of the Board for these years were erroneous, and failed to show any considerable proportion of the true value of complainant's franchise in the State of Kentucky, all of which was at the time and has ever since been well known by complainant and its officers and representatives, and that through such false information furnished to said Boards, and on account of said Boards failing to have proper information before them, the complainant has escaped taxation in the State of Kentucky on many millions of dollars' worth of property, and that the State of Kentucky has lost many hundreds of thousands of dollars which should have been paid by complainant to the State as taxes. The defendants admit that the complainant paid the amounts of the assessments for the years mentioned, but they deny that the complainand did not have sufficient information upon which it could determine whether or not such amounts were just, but they say that the complainant well knew that such amounts were not just to the State of Kentucky, and they deny that it has since been ascertained, or that it is true, that complainant by a physical valuation of its properties has learned that the value of the total capital stock of complainant does not exceed for the purpose of operating a railroad over complainant's system of railroad, the value of the tangi-
109 ble properties of complainant, nor the cost of reproducing said tangible property, but even if this should be true, the defendants state that the tangible property of complainant in the State of Kentucky is worth far more than the assessment made by the Railroad Commission and the State Board of Valuation and Assessment combined, and that the combined assessments are not equal to the value of complainant's tangible property in this State.

11.

For answer to paragraph 11 of complainant's bill, the defendants deny that complainant is ready or has always been ready or willing to pay all taxes due the Commonwealth of Kentucky, and all counties, cities, towns or taxing districts thereof; but they say that it is true that it has always paid promptly all such taxes based upon the assessments heretofore made for all years prior to 1912, and they admit that it has, when compelled so to do by the orders of this Honorable Court, promptly paid taxes upon the amount prescribed

by this court as a condition precedent to the issuance of the preliminary injunction ordered by this court in suit No. 731. The defendants state that it is true that the State Board of Valuation and Assessment will do its duty as prescribed by the statute of this State, unless they are enjoined from so doing by this Honorable Court, and that the Auditor and Assistant Auditor will carry out the provisions of the laws of this State and certify to the county
110 clerks of the several counties through which complainant's railroad in Kentucky extends, the amount claimed to be due to said counties and the taxing districts thereof by reason of the valuation fixed upon complainant's franchise for the current year by the Board of Valuation and Assessment, and they state that they presume that said county clerks will thereupon certify said assessments respectively to the tax collectors for all said counties, cities, towns and districts for collection, and that said collecting officers will thereupon proceed to make collections and institute suits, but they deny that any such suits will be unwarranted, vexatious or multitudinous, and they admit that it is true that actions and proceedings at law against complainant will be so instituted unless they comply with the laws of the State of Kentucky and pay the taxes upon the assessment made, but they deny that there will be any great annoyance or any injury, cost or damage to complainant by reason of any such suits, and they deny that any such suits will be instituted if complainant complies with the law and pays such taxes, and they state that they believe and have reasonable grounds to believe that all the officers whose duty it is to collect the taxes due on said assessment will take such steps as are prescribed and set out by the statute of this State to collect same, unless they are enjoined and restrained from so doing by the orders of this court, but they deny that there is any reason why said officials should be enjoined from proceeding to collect said taxes as shown to be due by said assessment, because they state that said assessment is reasonable and
111 just and should be collected. They deny that the complainant is utterly without any adequate remedy at law for protecting its rights or presenting its defenses to the claims made by the State, and they deny that said claims are illegal or that same are remedial only in equity, and they deny that unless an injunction is issued or unless same upon hearing is made perpetual, that great and irreparable injury, or any injury, will result to complainant, and they deny that complainant would be subjected to any suits or stripped of its property without due process of law, and they deny that such valuation constitutes a cloud, or constitutes a lien upon complainant's property in the Commonwealth of Kentucky, and they state that no injury can be done the complainant and none will be attempted, either directly or indirectly, through any legal proceedings or otherwise, if complainant complies with the laws of this State and pays its taxes upon the valuation made.

12.

The defendants now come and move this Honorable Court to dismiss the bill of complaint filed by complainant herein, because same

does not state any facts which constitute a cause of action against the defendants, and further, the defendants state that no Federal question is involved in this controversy. They state that the suit is a suit against the State of Kentucky, and that no such action can be maintained against the State of Kentucky, and the defendants plead and rely upon the Eleventh Amendment to the Constitution of
112 the United States as a bar to the right of complainant to maintain this action.

Wherefore, having answered, these defendants pray that complainant's bill be dismissed with judgment for their costs and damages, and all other reasonable relief to which they in equity may appear to be entitled.

JAMES GARNETT,
Attorney General.
M. M. LOGAN,
Asst. Attorney General.

JNO. L. RICH,
Of Counsel.

The affiant, H. M. Bosworth, says that he is one of the defendants herein and a member of the State Board of Valuation and Assessment, and that he believes the statements in the foregoing answer are true.

H. M. BOSWORTH.

Subscribed and sworn to before me by H. M. Bosworth, this 31st day of March, 1914.

J. W. MENZIES, *Clerk,*
By CHAS. N. WIARD, *D. C.*

113 On April 16, 1914 the following order was made and entered herein, to-wit:

#769.

ILLINOIS CENTRAL RAILROAD COMPANY
vs.
H. M. BOSWORTH et al.

Came plaintiff in the above entitled cause and filed an Amended Bill, to which defendants object and save exceptions, and this cause is now set for hearing on May 4th next at 2 P. M.

114 Said Amended Bill of Complainant filed by the foregoing order of April 16, 1914 is as follows, to-wit:

In the District Court of the United States for the Eastern District of Kentucky.

No. 769.

ILLINOIS CENTRAL RAILROAD COMPANY, Plaintiff,
versus
HENRY M. BOSWORTH, THOMAS S. RHEA and C. F. CRECELIUS, et al., Defendants.

Amended Bill of Complaint.

(Filed April 16, 1914. Jno. W. Menzies, Clerk, by Chas. N. Wiard, D. C.)

Plaintiff, by leave of court, amends its bill and says that the defendants, Bosworth, Rhea and Crecelius, in making their said assessment, made the following mistakes and errors:

1. In ascertaining the market value of the outstanding shares of stock and funded debt of the said corporation the said defendants, instead of using the average price of the capital stock during the year, used the highest price during the entire year at which any
115 of the shares of the capital stock of the plaintiff was sold, and instead of using the actual value of the bonds secured upon the railroad operated by the plaintiff, they used the par value of the said bonds, whereas in many instances the bonds were worth less than par, and by the said errors in computing the stocks and bonds an over-estimate of $18,466,541.00 was made.

2. In capitalizing what the said defendants considered to be the net earnings of the system of railroads operated by the plaintiff, by mistake the said defendants capitalized the gross corporate income of the plaintiff instead of capitalizing, as they should have done, the "Operating Income" of the plaintiff, plus such portion of its "Other Income" as was derived from "Railroad Operations," less "Other Rents," whereby a mistake of approximately $63,417,645.00 too much was made.

Plaintiff says that six per cent is a rate of interest too low to constitute a proper basis upon which to capitalize net earnings, and that on account of the risk involved of bad years and of reduced rates, the hazards of the business, the increase in the cost of wages and supplies, the burden of increased taxes, full crews, workmen's compensation for injuries, outlays for the construction of depots and grade crossings and other objects which do not increase revenue, no basis less than eight per cent affords any just criterion for computing value on the basis of capitalizing net earnings.

116 Wherefore plaintiff prays as in its original bill, and for all proper relief.

BLEWETT LEE,
TRABUE, DOOLAN & COX,
Counsel for Plaintiff.

117 On May 4, 1914 the following order was made and entered herein, to-wit:

United States District Court for the Eastern District of Kentucky.

Nos. 731 and 769.

ILLINOIS CENTRAL RAILROAD COMPANY, Plaintiff,
versus
H. M. BOSWORTH, etc., Defendants.

The above-entitled causes, Nos. 731 and 769, having been set for final hearing, on this date came the plaintiff therein by Blewett Lee and Edmond F. Trabue, its attorneys, and the defendants therein by M. M. Logan and John L. Rich, their attorneys. Defendants in each of said causes produced their answer to the amended bill therein which answer was ordered to be and the same is hereby filed.

Whereupon by agreement of parties by their attorneys aforesaid, the above-entitled causes are now ordered to be and the same are hereby consolidated.

Plaintiff produced and filed stipulation agreed to by the defendants, and the affidavits, and other papers and documents referred to in such stipulations, together with the affidavits of R. W. Bell and D. W. Longstreet, including the affidavits from the various counties mentioned in said stipulations filed by plaintiff; and thereupon came the defendants and produced two stipulations agreed to by
118 plaintiff, which stipulations of plaintiff and defendants are ordered to be, and are hereby filed and are now approved by the court, and the agreements therein are authorized accordingly; and it is ordered by the court that the affidavits, documents, papers, and other evidence referred to in the stipulations shall be considered as evidence in these cases Nos. 731 and 769, in accordance with the agreements between plaintiff and defendants contained in said stipulations.

And it is further ordered that the affidavit of A. B. Jones and the affidavits of ex-assessors from seventy-four counties, produced by defendants, be and the same are hereby filed; and it is further ordered that the reports referred to in said stipulation, viz., Railroad Bulletin No. 21, Commercial Valuation of Railroads; Proceedings of the State Board of Equalization of Kentucky for the year 1904; reports of the Auditor of Kentucky for the years 1904 and 1905; report of the Tax Commission appointed December 21, 1908; sixty-first annual report of the Illinois Central Railroad Company for the year 1911; sixty-second annual report of the Illinois Central Railroad for the year 1912, be and the same are hereby filed.

It is further ordered that the affidavits of H. M. Bosworth, T. S. Ray and C. F. Crecelius filed in action No. 731 on motion for a preliminary injunction shall be considered as evidence in these cases on this hearing, and that the cross-examination of G. W. Lamb on the hearing before the Board of Valuation and Assessment when considering the assessment of the Louisville & Nashville Rail-
119 road for the year 1913 shall be considered as evidence in these two cases; and that the affidavit of H. M. Bosworth on

hearing for preliminary injunction in case 769 shall be considered as evidence in these cases and that each of the affidavits filed before the Board of Valuation and Assessment in the Louisville & Nashville Railroad case when the Board had same under consideration for the 1913 assessment, showing the ratio of assessed value to real value of Kentucky property for 1912 and 1913, shall be considered and treated as evidence in these cases the same as if said affidavits had been filed in each of these cases.

Then came plaintiff and objected to each and every one of the affidavits produced by defendants on the question of the ratio of assessed value to real value, and to the documents produced and tendered by the defendants, upon the ground that they were irrelevant and incompetent; and came the defendants and objected to each and all of the affidavits and documents produced by plaintiff upon similar grounds.

Pursuant to stipulation between plaintiff and defendants, through their respective counsel, it is ordered that the testimony of John E. Garner to be given in open court in cases Nos. 733 and 775, Chesapeake & Ohio Railway Company v. H. M. Bosworth, et al., and the affidavit of M. B. Blauvelt, to be filed in office May 29th, and in court by order of June 8, 1914, together with exhibits therewith, be considered on the final hearing in submission of this case.

Plaintiff, upon the final hearing, introduced its oral evidence, and upon the whole record these cases are submitted for final decree.

Said Answer filed to Amended Bill of Complaint by fore-
120 going order of May 4, 1914 is as follows, to-wit:

In the District Court of the United States for the Eastern District of Kentucky.

No. 769.

ILLINOIS CENTRAL RAILROAD COMPANY, Plaintiff,
versus
HENRY M. BOSWORTH, THOMAS S. RHEA and C. F. CRECELIUS, et al., Defendants.

Answer to Amended Bill of Complaint.

(Filed May 4, 1914.)

The defendants deny that in ascertaining the market value of the outstanding shares of stock and funded debt of said corporation, the said defendants instead of using the average price of the capital stock during the year, used the highest price during the entire year at which any of the shares of the capital stock of the plaintiff were sold. The defendants in ascertaining the value of the capital stock of the complainant, by the stock and bond plan, in estimating the value of the outstanding shares, used the price of the capital stock used by complainant in exhibit filed by it, and said exhibit

contained all the evidence before the Board, as to the value of
121 its shares, as on June 30, 1912. In estimating the value of complainant's outstanding debt, they did consider and treat the outstanding bonds of said company as being worth par. There was no evidence before the Board that any of the bonds of said company were on June 30, 1912, or at any other date, during that year worth less than par. The defendants deny that there was any error on their part in computing the value of the stock and bonds of complainant, and that the value of same were over-estimated or over-valued to the amount or extent of $18,466,521.00 or any sum or amount.

Second. The defendants move to dismiss Section two of the Amended Bill of Complaint, filed herein on April 16, 1914.

Wherefore, the defendants having fully answered herein, pray that the complainant's Original and Amended Bill be dismissed, as they will ever pray.

JAMES GARNETT,
Attorney General.
JNO. L. RICH,
M. M. LOGAN,
Ass't Attorney General.

122 Complainant's Stipulation filed by the foregoing order of May 4, 1914, is as follows, to-wit:

United States District Court, Eastern District of Kentucky, at Frankfort.

No. 731.

ILLINOIS CENTRAL RAILROAD COMPANY
versus
HENRY M. BOSWORTH et al.

No. 769.

SAME
versus
SAME.

Stipulation.

(Filed May 4, 1914.)

It is stipulated between plaintiff, Illinois Central R. R. Co., and defendants, Henry M. Bosworth, et al., that on the final hearing of the above-entitled cases the following documents and other papers and the affidavits hereinafter specified may be read in evidence and considered and treated without objection as evidence, the said affidavits being treated as depositions of the affiants duly taken, viz:

123 1. Affidavit of Archibald S. Baldwin, printed pamphlet, "Bill and Affidavits," page 25.
"Daniel J. Brumley," page 26.
"Arthur L. Davis," page 27.
"Daniel J. Brumley," page 39.
"Daniel J. Brumley," page 41.
"Chas. H. Markham," page 31.
"Martin P. Blauvelt," page 35.
"Martin P. Blauvelt," page 29.
"Milton H. Smith," page 43.

2. Census reports, State and Federal, read on motion for preliminary injunction in one or the other of these cases and, also, such reports mentioned in the affidavit of G. W. Lamb, filed in the case in this court of Louisville & Nashville Railroad Company against the defendants herein.

3. Reports of the Board of Equalization of the State of Kentucky for the years 1910, 1911 and 1912 read on motion for preliminary injunction in one of these cases, and the report of said Board for the year 1913.

3½. Reports of State Auditor for same years.

4. Report of the Special Tax Commission of the State of Kentucky, 1912-14.

5. Affidavit of G. W. Lamb hereinbefore mentioned, except such part of it as is applicable to the details of the assessment of the Louisville & Nashville R. R. Co., hereafter to be specifically indicated.

6. Affidavit of M. K. Barnum of November 18, 1912, read on the hearing of the motion for preliminary injunction.

124 7. Equalization table entitled Equalization read on the hearing on the motion for preliminary injunction herein, and,

Analysis of aggregate assessment of all property subject to ad valorem taxation in Kentucky showing % that each class is of the total of all taxable property.

8. Affidavit of David W. Longstreet dated April 24, 1914.

9. Affidavit of Robt. W. Bell, dated April 23, 1914.

10. List of sworn statements of ratio of assessment to real value of realty in Kentucky for the years 1911 and 1912:

County.	Name.
Ballard	J. N. Trimble.
	V. A. Crice.
	Wm. Henderson.
	B. F. Billington.
	D. C. Tackett.
Caldwell	J. D. Leech.
	W. D. Dawson.
	Henry Towery.
	M. P. Smith.
	R. L. Gresham.
Carlisle	John E. Kane.
	J. O. Glenn.
	Jas. R. Burnley.

Christian	.....	E. C. Radford.
		G. L. Campbell.
		T. J. McReynolds.
		W. T. Tandy.
		W. A. Radford.
125 Daviess	.....	T. A. Pedley
Fulton	.....	H. F. Taylor.
		R. M. Chowning.
Henderson	.....	H. H. Williams.
		David Banks.
		Robert E. Johnson.
		Gabriel W. Crutcher.
		A. H. Abbott.
La Rue	.....	John W. Read.
Lyon	.....	J. M. Smith.
		W. N. Cummins.
		T. P. Gray.
		U. S. King.
		Sam G. Cash.
Marshall	.....	J. H. Little.
Muhlenberg	.....	D. M. Roll.
		W. D. Blackwell.
		H. C. Lewis.
		G. M. York.
		C. E. Blackwell.
Trigg	.....	Edw. R. Sekelt.

11. Affidavits filed by Louisville & Nashville R. R. Co., Chesapeake & Ohio R'y Co. and Cincinnati, New Orleans and Texas Pacific R'y Co., showing ratio of assessment to real value of Kentucky property for the years 1911 and 1912.

126. 12. Exhibit G with bill in case No. 769 and the affidavits attached thereto filed by plaintiff with the Board of Valuation and Assessment.

BLEWETT LEE,
TRABUE, DOOLAN & COX,
For Plaintiff.

M. M. LOGAN,
Ass't Att'y General, for Defendants.

127 The affidavits of Archibald S. Baldwin, Daniel J. Brumley and Arthur L. Davis filed in case #731 on November 20, 1912 and the affidavit of Daniel J. Brumley filed in case #731 on December 6, 1912 and the affidavit of Charles H. Markham in case #731 filed on September 20, 1912 and the affidavit of Martin P. Blauvelt in case #731 filed December 6, 1912 and the affidavit of Martin P. Blauvelt in case #731 filed on November 20, 1912 and referred to in Item 1 of Plaintiff's stipulation filed May 4, 1914 are copied in case #731 but not copied in case #769 as they are not evidence in case #769.

Said affidavit of Milton H. Smith referred to in foregoing Stipulation filed on May 4, 1914 is as follows, to-wit:

In the District Court of the United States for the Eastern District of Kentucky.

In Equity. No. 729.

LOUISVILLE & NASHVILLE RAILROAD COMPANY, Complainant,
versus
H. M. BOSWORTH et al., Defendants.

Affidavit of Milton H. Smith.

The affiant, Milton H. Smith, states he is seventy-six years of age, a resident of Louisville, Kentucky, and is now and has been for more than thirty years the chief executive officer with the title of President or Vice President of the complainant, Louisville & Nashville Railroad Company. He states he has reason to believe and does believe that the assessment of complainant's franchise herein complained of is not only a false assessment, grossly in excess of the actual value of the franchise alleged to have been assessed, and arbitrarily and capriciously made without any reason for the conclusion reached, except a desire to force complainant to pay an undue proportion of the State's revenues, but the members of the Board of Valuation and Assessment were illegally influenced and co-
128 erced into making said assessment by one Justus Goebel, referred to in complainant's bill as "Adviser to the Board of Valuation and Assessment."

The said Goebel, who volunteered his services as such "Adviser," claims to be a resident of Covington, Kentucky, but his place of business, if any he has, is in Cincinnati, Ohio, and his family, as affiant is informed and believes, resides in Arizona. The said Goebel is not an officer nor an employe of the State of Kentucky; is not a lawyer nor an accountant, nor one who has had any experience in valuing railroads or other similar properties; nor has he had any experience to qualify him in any sense as a tax expert. He is a man, however, full of vindictive animosity, and is now and has been for many years fanatically hostile to the public service corporations, especially the steam railroad companies operating their lines in the State of Kentucky, and particularly the complainant, Louisville & Nashville Railroad Company, and in order to injure and cripple said corporations he planned and schemed to obtain an undue influence and control over the members of said Board in the matter of valuing and assessing the franchises of such corporations for the year 1912.

In January, 1900, the said Goebel's brother, William Goebel, who had been the Democratic candidate for Governor of Kentucky, at the election held in November, 1899, and who was making a contest over the result of said election, his opponent having been declared elected, was assassinated. The whole State of Kentucky was thereby

thrown into wild excitement, and for several years thereafter
129 was in political turmoil, and references to the spilt blood of William Goebel have down to the present time been found by those desiring to use the same to be an easy and sure way of stirring up the passions of the people. In his campaign for Governor, the said William Goebel had violently assailade the corporations of this State, and the complainant, Louisville & Nashville Railroad Company, in particular.

As above stated, the said Julius Goebel is and has been since assassination of his brother, William Goebel, extremely bitter toward corporations, and more especially railroad corporations, in this State; and by the time the members of the present Board of Valuation and Assessment came to take up the matter of valuing and assessing the franchises of public service corporations doing business in this State, and for some time prior thereto, he got busy and, having acquired by some means the influnece and control over the said members he had sought and labored for, he exercised the same by inducing said board on or about April 12, 1912, to adopt his figures and promulgate the tentative assessments he had presented, and susequently to approve and announce the final assessments he had dictated of the franchises of said corporations, including that of the complainant, in order to gratify his personal hatred and malice, and to exploit himself in the newspapers, as he has repeatedly done, under the pretense that he is an unselfish patriot, claiming to have employed much time and labor in the interest of the people at large without compensation
or hope of political or official reward, treating the members
130 of said Board as figureheads, and arrogating to himself supposed great credit, honor, and glory for what he had accomplished through said Board as his instrumentality.

Affiant states after said Goebel got into communication with the members of said Board, he stayed with them continuously for about six months, though he was not and is not an official nor an employe of the State, nor a man of any special knowledge or experience in such tax matters or in the valuation or assessment of the properties of railroads or properties in public use; and affiant believes and has reason to believe that said Goebel dominated said Board and demanded that the assessment of the franchises of the steam and street railroads, and other public service corporations, assessable by said Board, should be fixed at amounts named by him, and which are the amounts at which they were in fact finally fixed by said Board, and said assessments or not, in any just or proper sense, the assessments of said Board, but are the assessments of Justus Goebel. The said assessments aforesaid are not the result of the free, independent, or unbiased judgment of the members of said Board, but the same were dictated and procured by said Goebel and are the outcome and product of his dominating influence and control over said Board, the members of which were actuated by their desire to raise the State's revenues sufficiently to pay off its outstanding indebtedness during
the four years' term of the present State administration with-
131 out resorting to the Legilature to raise the existing tax rate of fifty (50) cents on each $100 of property generally returned for State taxation.

The affiant states that under date of September 7, 1912, after the said final assessments were promulgated, one Thomas B. Cromwell, upon information received by him from said Goebel, sent a special dispatch from Lexington, Kentucky, to the Cincinnati Enquirer, which was published in that newspaper September 8, 1912, containing, among other things, the following statements concerning the part played by said Goebel in procuring said assessments:

"It was Justus Goebel, with General Percy Haly, who proposed the name of James B. McCreary for Governor, and it was he who formed the alliance that promoted his nomination and election. It was Justus Goebel who furnished what was ultimately necessary to encompass the defeat of Ruby Laffoon by Henry Bosworth for the nomination which resulted in the election of Bosworth as State Auditor and made him Chairman of the Board of Assessment and Valuation, the other two members of which are State Treasurer Thomas Rhea and Secretary of State C. F. Crecelius.

"When Justus Goebel was doing these things it was with a view to securing this increased revenue from the franchise tax. Before he gave his support to Auditor Bosworth he sent for him in May, 1910, and asked him what his ideas about this matter were. Bosworth replied that he would do 'only the fair thing by the people and the corporations,' whereupon Justus Goebel unfolded to him his ambition to have the ideals of William Goebel about these assessments carried out. Bosworth expressed a willingness to do what Justus Goebel would advise, and, accepting his advice, made the increased valuation of franchises his platform, thus becoming the pio-
132 neer among the members of this State administration in the movement for the advancement of the people's interests in this direction.

"The effort that was made last winter to create by legislative enactment a Public Utilities Commission had the indorsement of Treasurer Rhea and other members of the State's official family, but it was not a part of the Goebel-Bosworth plan and they put up a hard fight, that resulted in its defeat. The fight over the public utilities bill delayed the work of the State Board of Valuation and Assessment, but as soon as the Legislature was adjourned Justus Goebel suggested to Chairman Bosworth the employment of John L. Rich, the Covington attorney, who has had wide experience in matters involving taxation, and together they went to work to probe the past and to bring about tentative assessments that more nearly represented justice and equity than did the figures upon which the railroads had paid a pittance, and the lobbyists had waxed fat. At the end of a month they placed before the board the result of their investigations, and the board, after carefully studying the figures and the evidence, voted the adoption of large increases."

Again, as showing his animus in procuring these assessments to be made by said Board, the said Goebel, in an open letter dated October 31, 1912, addressed to the Governor and others, published in the Courier Journal and other newspapers, after quoting the words alleged to have been uttered by his brother, William Goebel, who was shot by an assassin in January 1900, stated:

"These last words of my assassinated brother, William Goebel, have a sacred significance to me and when in September, 1909, I again commenced to take an active interest in our State's affairs, it was not to gain political favor, for there is no office I would
133 have; but it was with hope and confidence that my work would, during the administration of the present State officers, open up an opportunity for Kentucky to take up William Goebel's work where the assassin's bullet had interrupted it, and in that event every department of our government would give thereto by voice and action most positive, vigorous and loyal support."

As further illustrating his leading and controlling part in bringing about these franchise assessments and the motives which actuated him, said Goebel stated, in the same open letter.

"My interest in the work just completed by the board was, and is, different from, and greater than, that of any man in Kentucky or elsewhere—even though he may have been connected with the work. Love of my State and love for and memory of my assassinated brother, whose brain-work constructed and whose blood stained the statutes which made it possible to do what the Board of Valuation and Assessment has just completed, have compelled of me the service I have rendered in the matter, and, without official duty resting on me, I have given untiringly and almost constantly more than five months of time, energy and study to these assessments in the interest of the State and its people, to the exclusion of every other interest—business and personal."

Furthermore, in a prepared speech read by him before an assembly of county officers which he was instrumental in calling together from different parts of the State, in Frankfort, Kentucky, on November 8, 1912, as published in the Evening Post of Louisville, the said Goebel made this admission:

134 "I have labored for months and years to bring about the assessments made in 1912."

And in the same speech, by way of showing what a severe blow he thought he had dealt the public service corporations in this State through said Board, the said Goebel appealed to the cupidity of his hearers as follows:

"What does the hundred million dollar increase made by the present Board of Valuation and Assessment on corporation franchises mean to the people of different sections of the State and to the whole State?

"The one hundred million dollar increase means half as much as the amount of the total value of all the property equalized for taxation in the county of Jefferson, which includes the city of Louisville.

"Comparing the increase with the counties that contain the three largest second-class cities of the State, the increase equals the amount of the total value of all property equalized for taxation in the counties of Campbell, Fayette, Kenton, and Franklin, combined, which include the cities of Newport, Lexington, Covington and Frankfort.

"Comparing the increase of one hundred million dollars with the western section of the State, it equals the amount of the total value

of all property equalized for taxation in the entire first congressional district, embracing thirteen counties, and in addition thereto, of all the counties of the Second district, with the exception of Henderson and Daviess.

"Comparing the increase of one hundred million dollars with the central portion of the State, it equals the amount of the total value of all property equalized for taxation in the Eighth congressional district, embracing ten counties, and in addition thereto the
135 county of Fayette, which includes the city of Lexington.

"Comparing the one hundred million dollar increase with the eastern section of the State, it equals the amount of the total value of all property equalized for taxation in all the counties embraced in the old Ninth and Tenth congressional districts, with the exception of the county of Fleming, or, in all twenty-six counties."

Still further illustrating said Goebel's rabid animosity and maliciousness against these corporate interests while appearing in the role of "Adviser" before said Board, as well as the fact that these increased assessments were the result of his own individual scheme and handiwork co-operating with the desire of the members of said Board to increase the revenues of the State for the purpose aforesaid, he, in the same tirade delivered on November 8, used this language:

"When first I determined to give myself to this work of compelling adequate taxation of corporations, I knew they would invoke every power of the world, the flesh and the devil that could possibly, by fair means or foul, be commanded to aid them to prevent the carrying out of my designs which were already a part of the just law of the land, and I have not been disappointed."

Affiant states that the members of the said Board have made no denial of these statements of said Goebel giving an account of the part he took in these assessments and in causing said Board to make the same, but the members of said Board, by their silence and failure in any manner to contradict the same, have acquiesced in the correctness and truth thereof as given out by said Goebel, himself.

136 Affiant states that said Goebel concluded his said harangue on the occasion mentioned with the following vicious, false, and slanderous accusations against the public service corporations of this State:

"We are fighting a monster, we are fighting a demon that will resort to anything—and they tried everything but murder to prevent the board from making these assessments.

"They have attempted to corrupt the Board of Assessment and Valuation, and they will go further to attain their end. If they can, they will corrupt the courts, as they have done ere this. And that is what I want to convince you of and warn you against. Protect yourselves and others in these cases and have lawyers who will make the facts so clear that there can be but one course open to the courts, and then they will follow it."

Affiant states he is informed and believes that said Goebel prepared and caused to be printed and stereotyped or put in plate form,

in Cincinnati, Ohio, for publication simultaneously, on or about October 22, 1922, in more than one hundred newspapers in Kentucky, an incendiary and sensational communication, in which he abused and villified the corporations assessed as aforesaid and severely criticised the Governor and other State officials for their alleged lack of zeal and sympathy with him in having these extraordinary assessments brought about, and their alleged failure or refusal to employ additional attorneys to aid the Attorney General in defending the injunction suits instituted in this Court by the corporate victims of said assessments.

137 But affiant is informed and believes that after placing said plate matter in the hands of the express company or companies for transportation to the various newspapers throughout this State for publication as aforesaid, the said Goebel was by some means or in some manner induced by some person or persons to recall and withhold said communication from publication as he had contemplated; and thereafter a communication of like character, dated October 31, 1912, hereinabove referred to, was addressed by said Goebel to the Governor and others, in a greatly modified form, and caused by him to be published in the Courier-Journal, at Louisville, and other newspapers on or about November 1, 1912.

Affiant states he believes and has reason to believe that by these methods, and by other incendiary statements of this kind, as well as threats on the part of said Goebel to hold up the members of said Board before the people of the State as untrue to their official duties if they refused to fix such franchise assessments as he desired and put before them, the said Goebel coerced the said Board into making said assessments, and has in the way above pointed out endeavored to coerce the Governor and Attorney General of the State, as well as the officials of the several counties interested in said assessments, into doing his bidding and what he demands in the matter of the employment of special or additional counsel of his selection or to be named by him at high fees upon contracts dictated or prepared by him, to assist the Attorney General in the injunction suits brought by the complainant and other corporations in this court.

138 Affiant states that the Governor of the State in a published statement, referring to the said modified communication of said Goebel, has said:

"He (Justus Goebel) was present at the meetings of the Board of Valuation and Assessment, which occupied about five months."

In what avowed capacity Justus Goebel was present at these meetings of said Board during that period affiant has been unable to learn, but that he was present and exercised a sinister influence upon the said Board he believes to be an undoubted and undeniable fact; and, in the making of the assessment of the franchise of the complainant, Louisville & Nashville Railroad Company complained of in this action, that Company has been treated, at the instance of said Goebel, not as a citizen and taxpayer of the State of Kentucky, but in the language above quoted of said Goebel as "a monster—a demon."

Affiant states that it was under the lash and spur of this external power exerted on the part of "Adviser Goebel" and exercised by him almost incessantly for many months, and through his threats and intimidation, that said Board, moved by considerations other than an impartial and independent discharge of its own duty, made the final assessments of the franchise of said corporations, including that of the complainant, which were fixed and promulgated on August 31, 1912, and the same are on that account to all intents and purposes fraudulent and void.

139 By way of showing the injustice and inequality of the final assessments by said Board of the franchises of the complainant and other public service corporations that have brought their injunction suits in this Court, as compared with the assessments made by said Board of the franchises of other corporations and bank shares of stock, and with assessments of other property in this State as equalized by the Board of Equalization, and the effect upon the complainant corporations in their said suits, should taxes based on the franchise assessment complained of be exacted of them, affiant files herewith as part hereof his communication, marked Exhibit A, published in the Courier-Journal in its issue of this date, the statements of which are true.

M. H. SMITH.

STATE OF KENTUCKY,
County of Jefferson, ss:

Subscribed and sworn to before me by said Milton H. Smith, this the 19th day of November, 1912.

My commission expires on the 24th day of January, 1914.

G. W. B. OLMSTEAD,
Notary Public, Jefferson County, Ky.

140 The Census report State and Federal and other reports referred to in Item 2 of plaintiff's Stipulation filed on May 4, 1914 are not copied as they are included in Bill of Evidence prepared by respective counsel and approved by the court.

Reports of Board of Equalization referred to in Item 3 of plaintiffs Stipulation filed May 4, 1914 not copied for same reason.

Reports of State Auditor referred to in Item 3½ of plaintiff's Stipulation filed May 4, 1914 not copied for same reason.

Report of Special Tax Commission of State of Kentucky 1912-14 referred to in Item 4 of Stipulation filed May 4, 1914 is not copied for same reason.

Part of Affidavit of George W. Lamb referred to in Item 5 of plaintiff's Stipulation of May 4, 1914 is as follows, to-wit:

In the District Court of the United States for the Eastern District of Kentucky.

No. 731. In Equity.

LOUISVILLE & NASHVILLE RAILROAD COMPANY, Plaintiff,
versus
H. M. BOSWORTH et al., Defendants.

Affidavit of Geo. W. Lamb.

The affiant, Geo. W. Lamb, says that he is forty years of age and is a resident of Louisville, Ky., and is Second Assistant Comptroller of the Louisville & Nashville Railroad Company, and that his duties as such Second Assistant Comptroller are to assist the Comptroller of said company in the supervision and direction of all of the accounts, records and statistics of said company; that he has been connected with the Accounting Department of the Louisville & Nashville Railroad Company for nearly fourteen years, and is familiar with all of the accounts, records and statistics of said company.

141 Affiant says particularly that during the last four or five years his time has been devoted very largely to the preparation of statistics and investigations as to the values of properties of the Louisville & Nashville Railroad Company in the several States through which the lines of that company pass; that he has prepared, and supervised the preparation of, reports of the Louisville & Nashville Railroad Company to the Railroad Commission of the State of Kentucky, to the railroad commission of other States to which the Louisville & Nashville Railroad Company renders such reports, and to the Interstate Commerce Commission, and he is familiar with the facts and figures set forth in said reports, and with the sources from which said reports are compiled.

Affiant says that he has particularly considered and studied the returns on investments and the risk in the railroad business as compared with the return on investment and the risk in other classes of business in the territory through which the Louisville & Nashville Railroad Company operates its lines; and affiant says that in view of the risks of the railroad business, the percentage used in capitalizing income for the purpose of arriving at the value of the capital stock of a railroad company for taxation purposes should not be less than 8%.

Comparisons of Real Values and Assessed Values in the State of Kentucky.

Affiant says that the report of the United States Census for 1890, pages 14 and 59, shows that the percentage of assessed valuation to

true valuation of real and personal property taxed in the
142 State of Kentucky declined from 96.60% in 1850 to 46.71% in 1890, and affiant showed this fact to the Board of Valuation and Assessment in the hearings before it as set forth in his Exhibit Geo. W. Lamb No. 25, which is filed as part of "Exhibit A" with the Bill in this case.

Affiant further states that according to Tables 15 and 16 of the Special Report on Wealth, Debt and Taxation, issued by the Census Bureau in 1907, the percentage of assessed value to estimated true value of property subject to ad valorem taxation in the State of Kentucky had declined to 45.09% by 1904, and this fact was shown to the Board of Valuation and Assessment in the hearings before it and was set forth in a statement filed by affiant with said Board marked "Exhibit Geo. W. Lamb No. 26," and a copy of this exhibit as filed by him appears as part of "Exhibit A" filed with the Bill in this case.

And for ready reference, affiant gives as follows the ratio of assessed value to estimated true value of real and personal property taxed in the State of Kentucky, including railroads, street railways, telegraph and telephone systems, privately owned waterworks and privately owned central electric light and power stations, at 10-year periods from 1850 to 1900, inclusive, and for 1904, as shown by pages 40 and 41 of the Special Report on Wealth, Debt and Taxation of the Census Bureau for 1900, and by pages 14 and 59 of the Special Report on Wealth, Debt and Taxation of the Census Bureau for 1890:

143	1850	96.60%
	1860	79.30%
1870		67.77%
1880		41.10%
1890		46.71%
1900		47.7 %
1904		45.9 %

And affiant showed these facts to said Board in said hearings before it in a statement which he filed with said Board marked "Exhibit Geo. W. Lamb No. 27," a true and correct copy of which exhibit is filed as part of "Exhibit A" with the Bill of Complaint in this case.

Affiant says that the comparisons given for the year 1904 were the latest comparisons available from the reports of investigations made by the United States Census Bureau, but that he himself made later comparisons between real values and assessed valuations in connection with the consideration of the work of the State Board of Equalization for 1913. In making such comparisons affiant compared the assessed values as equalized by said State Board of Equalization for 1913 with the real values as reported in a bulletin of the 13th Census of the United States for 1910; and affiant says that it is commonly known that the real values of property in Kentucy for 1913 were greater than the real values of property in Kentucky for 1910, and that, therefore, the percentages of assessed values to real values shown as a result of his comparisons of the assessments and equalizations

for 1913 with the real values for 1910 were higher percentages than would be shown by a comparison of the assessed values for
144 1913 with the real values for the same year.

Affiant says that his investigation showed with respect to tracts of land with improvements, line 15 of the Report of the Board of Equalization, an equalized value of $355,285,669, as compared with the real value of farm lands and buildings shown by the census of the United States for 1910 of $635,459,372, and that with respect to this item the percentage of equalized value for 1913 to the real value as shown by the 13th Census Report for 1910 was 55.9%.

Affiant says that the equalized value of thoroughbred or standard stallions, geldings, mares and colts, stallions of common stock, geldings, mares and colts of common stock, mules and mule colts, jacks, jennets, thoroughbred or standard bulls, cows and calves, bulls, cows and calves and steers of common stock, and sheep and hogs, as fixed by the Board of Equalization for 1913, as shown by lines 20, 22, 24, 26, 28, 30, 32, 34, 36, 38, 40, 42 and 44 of its report was $57,318,478, as compared with the real value for such live stock for 1910, as shown by the bulletin of the 13th Census of the United States of $117,486,662, and that the percentage of equalized value for 1913 to the real value for 1910 was 48.8%.

Affiant further says that the equalized value for 1913, as shown by lines 45 and 49 of the Report of the State Board of Equalization of Agricultural Implements, Wagons, Carriages, Bicycles and Vehicles of every kind, was $8,921,889, as compared with a real value for 1910, as shown by the United States Census of farm implements and machinery alone of $20,851,846. The equalized value for
145 1913, with respect to these items, was only 42.8% of the real value for 1910, and the real value does not include automobiles and other vehicles not used on farms.

Affiant says further that the bulletin for the 13th Census of the United States, which he has heretofore referred to, was a bulletin relating mainly to agricultural statistics for the State of Kentucky, and that while that bulletin shows separately the value of farm lands and the value of buildings on farm lands, it does not show separately the value of city or town lots with improvements or other real estate, but affiant is able to make a rough comparison of the equalized and real values of all taxed real property and improvements as follows:

From the Report of Wealth, Debt and Taxation, issued by the Census Bureau in 1907, and specifically from Table III, page 16 of said report, it appears that the total value of farm lands and improvements taxed was 52.872% of the total value of all taxed real property and improvements, and estimating that the increase in value for city and town lots with improvements was relatively the same as the increase in value of tracts of lands with improvements, it is apparent that the value of all taxed real property and improvements, as of 1910, may be roughly approximated by assuming that the value of tracts of lands and improvements, $635,459,672, shown by the bulletin of the 13th Census of the United States referred to, is 52.872% of the value of all taxed real property and improvements,

and upon this assumption the true value of all taxed real
146 property and improvements in Kentucky in
1910 was $1,201,882,607,
and from lines 18 and 15 of the Report of the Board of Equalization for 1913, it appears that the equalized value of all taxed real property and improvements was as follows:

18. Value of city or town lots with improvements..	$292,318,046.
15. Value of tracts of lands with improvements...	355,285,669,
Equalized value of all taxed real property and improvements	647,603,715,

from which it would appear that the equalized value of all taxed real property and improvements for 1913 was 53.882%
of the real value of said taxed real property and improvements in 1910 and was, therefore a much smaller percentage of the real value of said property in the same year in which the equalization was made.

Affiant says that of the total assessed value of personal property subject to taxation for 1913, as shown by the Report of the Board of Equalization.....	$202,170,189,
there was not subject to equalization, as shown by the Report of the Board of Equalization....	83,931,799,
147 leaving, subject to equalization.....	118,238,390,
which last amount was equalized at	120,635,691,
to which add amount not subject to equalization...	83,931,799,
and there is had, as the equalized value of personal property assessed or equalized by the State Board of Equalization	204,567,490.
Of this last amount affiant has been able to compare the equalized values of live stock, agricultural implements and vehicles, amounting to over.....	66,000,000,
with the real values, as he has heretofore explained, leaving about	138,000,000.

of the equalized value of personal property assessed or equalized by the State Board of Equalization for which no comparisons have been made.

And affiant further says that it is a matter of common knowledge in the State of Kentucky that personal property other than live stock and vehicles was and is either omitted from taxation or was and is assessed at a very small proportion of its real value.

And affiant says that of the general property tax collected in the State of Kentucky about 80% is equalized by the State Board of Equalization and that as a result of investigations which he has made in this regard it clearly appears that property equalized by the State Board of Equalization is assessed and taxed and equalized at not more than 52% of its real value.

148 Affiant further says that he has investigated the assessments made for 1913 by the State Board of Valuation and

Assessment of the franchises of corporations subject to its jurisdiction, and has compared the results of the calculations made by or on behalf of said Board and which appear or appeared in the envelopes on file in said Board's office with the final assessments made by said Board of certain corporations. Affiant says that the working papers and calculations considered by him were certified to be true and correct copies of the working papers and calculations which appeared in the jackets, or envelopes, in the Auditor's office, with respect to the assessments of the franchises of the several corporations considered for the year 1913, and that certification on said working papers and calculations was made by Chas. J. Veling, Chief Clerk of the Corporation Department in the office of the Auditor of Public Accounts and Secretary of the Board of Valuation and Assessment.

Affiant says that the following is substantially a true and correct copy of the working papers which appeared in the envelope relating to the assessment of the franchise of the Cumberland Pipe Line Company for taxation for the year 1913, and of notations on the jacket relating to said company:

149 Cumberland Pipe Line Co.
As on Yellow Slip.

6) 107,139

1780000
80

1,424,000.0

$1,400,000 is an 80% Assessment.

Jacket.

As finally assessed and paid on July 16, 1913.

Total Capital	$800,000
Less tangible property	361,924
Franchise	$438,076
Tax	2,190.38

Affiant further says that the item "107,139" refers to the net income of said Cumberland Pipe Line Company, Incorporated, as reported in the report made by said company to the Auditor of Public Accounts of Kentucky, as of June 30, 1912, and that the calculations appearing on said working paper represent the process of capitalizing said net income at 6% and equalizing the result at 80% as is shown by notation on said working papers that "$1,400,000 is an 80% Assessment."

Affiant says further that the final assessment made of the franchise of said Cumberland Pipe Line Company was based upon a valuation of the total capital stock of $800,000, which is 44.94% of the valuation of $1,780,000, arrived at by capitalizing the net income of said company, as reported to the Auditor of Public Accounts of Kentucky at 6%.

150 Affiant further says that the following is a copy of the working paper which appears in the jacket concerning the assessment of the franchise of the Louisville Gas Company for 1913 by the Board of Valuation and Assessment, and of the notations on said jacket with reference to the final assessment:

Louisville Gas Company.

Stock	3,600,000		
	120		
Asest.	720		Under the terms of the merger the city received 150 per share for its stock. The other holders the equivalent of $120.00.
should be	360		
$3,400,-	4,320,000	Market Value	
000.	200,000		
	4,520,000		
	21,752		
	216,000		
	6) 237,752		
$4,500,000.	3,962,500		
	4,520,000		
	2) 8,482,500		
	4,241,250	Average value.	
	80		
	3,393,000.00		

	21,752	Int.
	216,000	Div.
	237,752	
	74,920	Credit
6)	152,832	Net
	2,547,000	
	4,520,000	St'k & Bond
2)	7,067,000	
	3,533,000	Average
	80	
	2,826,400	

4,520,000 Total Capital
151 on basis of shares at 120 and bonds 3,533
70

2,473,100
at par 4520 2,250
70

3,164,000 220....
3,160,000 = 70%

(Jacket.)

As finally assessed and paid on July 19, 1913.

Total Capital	$2,250,000
Less tangible property, &c.	732,175
Franchise	$1,517,825
Tax	7,589.13

Affiant says that said calculations show that the Board of Valuation and Assessment found the value of the total capital stock of the Louisville Gas Company, on the stock and bond plan, to be $4,520,000.00,
and the value of the total capital stock arrived at by capitalizing at 6% the amount paid for interest and dividends alone to be..... 3,962,500.00,
and that the Board found the value of the capital stock of the Louisville Gas Company by averaging the two values above stated to be..... 4,241,250.00.

Affiant further says that the final assessment of the franchise of the Louisville Gas Company, made by the Board was based on an assessment of the total capital stock of said company at..... $2,250,000.00,
which amount is 49.78% of the valuation of.... 4,520,000.00,
arrived at on the stock and bond plan.

Affiant further says that the following are copies of memoranda and calculations appearing on working papers in the jacket,
152 or envelope, in the office of the Auditor of Public Accounts with respect to the franchise of the Pullman Company for taxation for the year 1913, and of notations on said jacket with reference to the final assessment made by the Board of Valuation and Assessment of the franchise of said company for said year:

Pullman Co.

Operating Car Rev.

12,719,552) 10,831,718.00 (85
10 175 641 6

656 076 40

85% of revenues of company are derived from operation of cars. Therefore that proportion of its entire capital must be employed as a common carrier—

Net Car Operating Revenues:

Less taxes 10831718.
931134

6) 9900584

165,000,000
.009

1,485,000 in Ky.

Mileage within and without Ky.

216969) 193 6000 (.009
195 0721

Stock and Bond Plan.

In report to Auditor Company state its stock is worth $105 per share. This — a very low valuation on 8% stock.

On this basis 120,000 shares *is* worth
105

600
120

126,000,000 Total Cap.

Deduct 18,000,000 Used in manufacture.

108,000,000
.009

972,000 in Ky.

153 Total Capital employed in business of company as shown by statement to Interstate Com. Commission
148,000,000

Employed in Manf. Deduct 22,200,000

125,800,000
.009

1,132,200 in Ky.
972,000 in Ky. Stock & Bond.
1,485,000 in Ky. Cap.—Net Income.

3) 3,589,000

1,163,000 Average in Ky.
80

932,400 in Ky.

(Jacket)

As finally assessed and paid on July 3, 1913.

Total Capital	$600,000
Less tangible property, etc	241,265
Franchise	$358,735
Tax	1,793.68

The final assessment of the franchise of the Pullman Company made by the State Board of Valuation and Assessment for 1913 was based upon a valuation of the total capital stock of that company in Kentucky of $600,000.00

Affiant says that the calculations on the working papers in the jacket pertaining to the Pullman Company show that the Board found the total capital stock of the Pullman Company in Kentucky to be, on basis of capitalizing operating revenues at 6% 1,485,000.00,

of which the assessed value of the total capital stock, $600,000.00, is about 40%

154 and the Board found the total value of the capital stock of the Pullman Company in Kentucky, on the stock and bond plan, with stock figured at $105 per share, to be 972,000.00,

of which the assessed value, $600,000.00, is about.. 61%,

but affiant says, as shown by notation on working paper made by the Board, $105 per share is a very low valuation on an 8% stock, and the market value of the capital stock of the Pullman Company on June 29, 1912, was $161 per share, on which basis the proportion of the value of the total capital stock assignable to Kentucky, after deducting $18,000,000.00 for capital used in manufacturing, is..... 1,576,800.00,

of which the value assessed by the Board, $600,000.00, is ..... 38.05%.

Affiant further says that the other calculations appearing on working papers in the Pullman Company jacket show that the Board averaged the number of valuations for the Pullman Company and arrived at an average valuation of the total capital stock of said company in the State of Kentucky of ..... 1,163,000.00, of which amount the final assessment of $600,000.00 made by the Board, is about ..... 51%.

155 Affiant further says the following is a copy of working sheet appearing in the jacket in the office of the Auditor of Public Accounts of the State of Kentucky relating to the assessment of the franchises of the Kentucky Traction and Terminal Company for taxation for the year 1913, and of notations on said jacket with reference to the final assessment of the franchise of said company:

Kentucky Tract. and Term. Co.

(As shown on Yellow Sheet)

6) 129,883

2,164,700
8

1,731,760

The amended report of this company shows payment of interest in the above sum, but also shows a large deficit. There is no information in report as to the value of its stocks and bonds. It is probable the company is highly over-capitalized. Because of its over-capitalization and the uncertain value of its stocks and bonds—would suggest a tentative assessment of $1,311,080, an increase of 600,000.00 over last year.

(Jacket)

As finally assessed and paid on August 8, 1913.	Total Capital	$1,200,000
	Less tangible property, etc.	711,080
	Franchise	$488,920
	Tax	2,444.60

Affiant says that according to the report of the Kentucky Traction & Terminal Company to the Auditor of Public Ac-
156 counts, as of June 30, 1912, the operations of that company do not show a large deficit, but, on the contrary, in order to show a deficit, said company charged up, and the Board allowed, as expenses $200,432.32 for enlargement of plant, and affiant says that

such expenditures are not properly treated as operating or other expenses, but should be treated as additions to the capital account, and that such expenditures are so treated by the Louisville & Nashville Railroad Company in the reports made by it to said Board.

Affiant further says that the calculations made on said working paper relating to the Kentucky Traction & Terminal Company show that the Board capitalized amount of interest paid by the Kentucky Traction & Terminal Company at 6%, and on this basis found that the total value of its capital stock in the State of Kentucky was $2,164,700.00,
of which amount the final assessment made by the Board of the total value of the capital stock of said company 1,200,000.00,
was, and is 55.43%;
and affiant says further that if the amount improperly charged to expenses as enlargement of plant.... 200,432.32,
had not been so improperly charged, the deficit of.. 91,183.26,
improperly shown in the report of said Kentucky Traction & Terminal Company to the Auditor of Public Accounts of Kentucky, for the year
157 ended June 30, 1912, would have shown instead a profit of 109,249.06,
and the capitalization of income as measured by interest paid, and by profit after paying interest at 6%, would be represented by the capitalization of .. 239,132.98
at 6%, which represents a total value of the capital stock of said company in Kentucky of over 3,985,000.00,
of which the assessment made by the State Board of Valuation and Assessment, $1,200,000.00, is about 30%.

The property in Kentucky is generally, habitually and intentionally, by the assessing authorities of said State, assessed and taxed at less than 60% of its real value.

(Signed) GEO. W. LAMB.

STATE OF KENTUCKY,
County of Jefferson, ss:

Subscribed and sworn to by Geo. W. Lamb before me, a Notary Public in and for the State and county aforesaid, this — day of ——, 1914.

My commission expires on the — day of ——, 191—.

Witness my hand and notarial seal this — day of ——, 1914.

——— ———,
Notary Public, Jefferson County, Ky.

158 Affidavit of M. K. Barnum of November 18, 1912 filed November 20, 1912 and referred to in Item 6 of plaintiff's stipulation filed May 4, 1914 copied in case #731 in which it is evidence but not copied in case #769, this case.

Equalization table referred to in Item 7 of Stipulation filed May

4, 1914 are not copied as same are included in Bill of Evidence prepared by respective counsel and approved by the court.

Affidavit of David W. Longestreet dated April 24, 1914 is as follows, being referred to in Item 8 of Stipulation filed May 4, 1914, to-wit:

United States District Court for the Eastern District of Kentucky.

No. 731.

ILLINOIS CENTRAL RAILROAD COMPANY, Complainant,
versus
H. M. BOSWORTH, THOMAS RHEA, and C. F. CRECELIUS, Constituting the Board of Valuation and Assessment for the Commonwealth of Kentucky, Defendants.

(Filed May 4, 1914.)

STATE OF ILLINOIS,
County of Cook, ss:

Affiant, David W. Longstreet, says that he is the Freight Traffic Manager of the Illinois Central Railroad Company and has filled this position for the last three years; that he has been engaged in the Traffic Department of the Illinois Central Railroad Company for nearly twenty-seven years, and that during his employment he has filled the following positions:

Clerk in Local Freight Agent offices at various points.
Clerk in General Freight Office at New Orleans, and in various capacities up to Chief Rate Clerk.
159 Chief Clerk in General Freight Department, Louisville.
General Freight Agent, Louisville.
General Freight Agent of Southern Lines, at Memphis.
Freight Traffic Manager since May 1, 1911, at Chicago.

That of his traffic experience seven years were spent in the State of Kentucky; that he is familiar with the traffic of the Illinois Central Railroad Company in that State and elsewhere upon its lines.

Affiant further says that in the operation of a railroad extending through many States, the earnings from traffic in any particular State *is* increased by the lines of railroad and terminals existing in other States, and that this is particularly true of terminals, which are the most expensive property of a railroad company, and that the convenience which such terminals afford the public contributes greatly to the amount of the earnings from the traffic.

Affiant further says that the State of Kentucky is located midway in the Illinois Central System and that much of the traffic of the Illinois Central Railroad is originated by lines and terminals in other States and passes through the State of Kentucky, thereby increasing the amount of earnings of the Kentucky lines; that all of the business moving over the lines of the Illinois Central Railroad between points north of the Ohio River and points south of the

State of Kentucky passes through the State of Kentucky, most of it on the main line between Cairo, Illinois and Fulton, Ky.,
160 and that notable instances of such traffic are the following, which passes over the said main line:

Cotton, 302,721 bales.
Lumber, 50,000 cars.
Pig iron and pipe, 100,000 tons.
Cottonseed products, 50,000 tons.
Sugar, 6,000 cars.
Bananas, 11,000 cars.
Coffee, 50,000 tons.
Sisal, 60,000 tons.
Grain and grain products, 20,000 cars.
Imported freight, other than items already mentioned, 150,000 tons.

Affiant further says that of the traffic which has been enumerated, all of it is through traffic increasing the earnings and value of the Kentucky lines, but not involving the use of terminals in the State of Kentucky, and that all of the traffic mentioned is dependent for its origin and delivery upon the existence of lines and terminals in other States, and that the import traffic, such as sisal, bananas, and other import traffic, is due to the existence of the very large and valuable terminals of the Illinois Central Railroad Company at New Orleans, without which the Kentucky lines of the Illinois Central Railroad Company would not enjoy the traffic, except in a comparatively small measure.

Affiant further says that the city of New Orleans does the third largest import business of any port in the United States.

Affiant further says that the lumber business is largely created by and in a considerable measure dependent upon the very
161 valuable terminals of the Illinois Central Railroad Company situated at Memphis, Tenn.; that Memphis, Tenn., is the largest market for hardwood lumber in the world.

Affiant further says that the grain traffic passing through the State of Kentucky over the lines of the Illinois Central Railroad Company is created in a great measure by the valuable terminals of that company situated in New Orleans and Memphis.

Affiant further says that, in addition to the traffic above mentioned, a very heavy traffic of lumber originating upon the lines and terminals of the Illinois Central Railroad Company passes through the State of Kentucky by the Louisville gateway, being delivered at Louisville to other lines, this amounting for the calendar year 1913 to 8,093 cars.

Affiant further says that in addition to the traffic above mentioned a large amount of traffic originates in the State of Kentucky and moves via the New Orleans terminals of the company in export to foreign countries, the amount of this traffic for the twelve months ending November 30, 1913, being 1,753 cars; also that there is a large amount of coal originating in Kentucky which moves to and via the terminals at Memphis and New Orleans, the quantity per year being about 45,000 cars.

Affiant further says that the terminals of the said company situ-

ated in the city of Chicago are of great value, and by reason thereof a large traffic passes through the State of Kentucky from Chicago to Southern points, consisting of general merchandise, articles of iron and steel manufacture, furniture, and other kinds of traffic,
162 which, but for the terminals in the said city of Chicago belonging to this company, would, in a great measure, cease to move over the lines of this company through the State of Kentucky.

Affiant further says that, from a traffic point of view, the relative importance of the valuable terminals of the Illinois Central Railroad Company located on Southern lines are:

New Orleans, Louisville,
Memphis, Paducah,

and on Northern lines:

Chicago,
East St. Louis and St. Louis,
Omaha (including Council Bluffs),

and that none of the terminals of the Illinois Central Railroad Company situated in the State of Kentucky are as important, in the matter of originating and controlling freight traffic, as the terminals outside the State mentioned above.

Affiant further says that, although Louisville, Ky., is a great traffic center and important market, the best terminals in that city are owned by the Louisville & Nashville Railroad Company.

Affiant further says that the traffic originating in Kentucky consisting mostly of tobacco and coal, while in itself considerable, is inconsiderable in comparison with the large traffic originating upon other parts of the Illinois Central Railroad and passing through the State of Kentucky, such as the through traffic already men-
163 tioned; that the benefit of the terminals situated upon the Illinois Central Railroad outside the State of Kentucky to the volume of traffic in Kentucky is, in the opinion of affiant, very much greater than the benefit of the terminals situated in the State of Kentucky to the volume of traffic on those parts of the Illinois Central Railroad situated outside the State of Kentucky.

Affiant further says that according to the practice of American railroads in prorating the earnings upon traffic between different railroad systems, it is not usually customary to allow anything for terminal expenses incurred, and that the result of the American practice of not making a separate charge for the use of the terminals operates in favor of the apparent earnings of lines located in States which lack large terminals or terminals expensive to operate, and against lines in States where terminals are costly and expensive to operate.

Affiant further says that in order to accurately ascertain the relative earnings of any particular State, the expense of operating the terminals therein should be considered.

D. W. LONGSTREET.

STATE OF ILLINOIS,
County of Cook, ss:

This day personally appeared before the undersigned, a Notary Public in and for the said State and County aforesaid, David W. Longstreet, whose signature appears above and is attached hereto, and made oath that the statements made in the foregoing
164 affidavit are true to the best of his knowledge and belief.

Given under my hand and seal at my office in Chicago, Ill., this 24th day of April, 1914.

[SEAL.] M. J. CONNELL,
Notary Public, Cook County, Ill.

165 Affidavit of Robert W. Bell of date April 23, 1914, referred to in Item 9 of Stipulation is as follows, to-wit:

United States District Court for the Eastern District of Kentucky.

No. 731.

ILLINOIS CENTRAL RAILROAD COMPANY, Complainant,
versus
H. M. BOSWORTH, THOMAS RHEA, and C. F. CRECELIUS, Constituting the Board of Valuation and Assessment for the Commonwealth of Kentucky, Defendants.

(Filed May 4, 1914.)

STATE OF ILLINOIS,
County of Cook, ss:

Affiant, Robert W. Bell, says that he is and for about one year last past has been the General Superintendent of Motive Power of the Illinois Central Railroad Company; that he has had about twenty-five years experience in the Mechanical Department of the same Company and has filled the following positions:

Machinist,
Locomotive Fireman,
Locomotive Engineer,
Traveling Engineer,
Round House Foreman,
166 General Foreman,
Master Mechanic,
Assistant Superintendent of Machinery,
Superintendent of Machinery,
General Superintendent of Motive Power.

Affiant further says that in his office are kept the records of all the rolling stock of the Illinois Central Railroad Company, showing the cost, extent of depreciation and the value thereof; that he is the proper person to make this affidavit; and that according to the said records the value of all the rolling stock of the Illinois Central Rail-

road Company, anywhere situated, on June 30, 1911, amounted to $38,256,118.00 and on June 30, 1912, to $39,185,545.00; and that said values are true and correct according to the best of his knowledge and belief.

Affiant further says that schedules marked 1 and 2, hereto attached, show the description and number of each class or kind of rolling stock belonging to the Illinois Central Railroad Company, and show the average value and the total value of the same at the periods named.

Affiant further says that the method used in computing the value of such rolling stock is as follows: The original cost of each piece of equipment is depreciated, in the case of locomotives at the rate of four per cent per annum with a minimum of five hundred dollars as the scrap value, in the case of passenger cars at four per cent per annum with a minimum of five hundred dollars as the scrap value, and in the case of freight cars at six per cent per annum down to forty per cent of the original cost, when depreciation
167 ceases entirely. That in the case of rolling stock the depreciation is figured in accordance with certain rules known as Master Mechanic and Master Car Builders' Rules, which are compiled and drawn from the experience of the various railroads of the country during a period of many years, and have been made by experts in the operation and building of locomotives and cars and persons familiar with the depreciation of rolling stock; that the depreciation computed in accordance with these rules represents the best practice and experience of the experts of the country engaged in the manufacture and care of rolling stock.

Affiant further says that in his opinion no fairer method has been suggested or devised of prorating the rolling stock operated upon the entire system of a railroad company, as between the different States, for the purposes of taxation, than to use in the case of locomotive engines the car mileage of such engines, in the case of passenger cars the car mileage and the passenger miles in each State, as compared with the entire system, and that the average of the result obtained by the two methods would, in his opinion, be probably nearer correct than the employment of either method alone, although the results of each of the two methods are not very different, and that, in his opinion, in the case of freight cars the prorating between States in accordance with the car mileage of such cars, or in accordance with the ton mile records of freight would be the fairest methods, and that the average of the two methods, the
168 results of which do not greatly differ from each other, would be probably a nearer approximation of the correct result than the use of either method alone.

ROBERT W. BELL.

STATE OF ILLINOIS,
County of Cook, ss:

This day personally appeared before the undersigned, a Notary Public in and for the said State and county aforesaid, Robert W. Bell, whose signature appears above and is attached hereto, and

made oath that the statements made in the foregoing affidavit are true to the best of his knowledge and belief.

Given under my hand and seal at my office in Chicago, Ill., this 23d day of April, 1914.

M. J. O'CONNELL.
Notary Public, Cook County, Illinois.

169 EXHIBIT No. 1.

Schedule No. 2.

List Showing the Description and Number of Each Class or Kind of Rolling Stock Belonging to the Illinois Central Railroad Company, Showing the Average Value and the Total Value of the Same:

Description.	No.	Average.	Total value.
Locomotives—All Classes	1,321	$7,351.39	$9,711,183.00
Passenger Cars	496	2,913.41	1,445,050.00
Sleeping Cars	.....	.....	.....
Dining Cars	15	10,678.80	160,182.00
Cafe Cars	19	10,467.84	198,889.00
Parlor Cars	11	6,459.73	71,057.00
Chair Cars	68	6,276.84	426,825.00
Special Cars	12	6,803.00	81,636.00
Pay Cars	.....	.....	.....
Express Cars	145	2,333.06	338,294.00
Baggage, Mail and Express Cars	.....	.....	.....
Combination Cars	65	1,735.05	112,778.00
Box Cars	32,775	445.82	14,611,751.00
Stock Cars	797	244.58	194,930.00
Coal Cars	21,598	415.41	8,972,025.00
Flat Cars	2,457	367.64	903,291.00
Tank Cars	10	918.40	9,184.00
Ballast Cars	182	298.73	54,369.00
Caboose Cars	670	291.82	195,520.00
Dump Cars	.....	.....	.....
Pile Driver Cars	8	1,453.75	11,630.00
Wrecking Cars	24	2,746.29	65,911.00
Tool and Working Cars	1,547	150.00	232,050.00
Steam Shovel Cars	10	2,528.90	25,289.00
Push Cars	870	21.50	18,705.00
Hand Cars	870	28.50	24,795.00
All other kinds of Cars	389	316.09	122,958.00
Postal Cars	52	5,150.31	267,816.00
Total Value of Rolling Stock	.....	.....	$38,256,118.00

Class.	Total value.
Engines	$9,711,183.00
Passenger Cars	3,102,527.00
Freight Cars	25,442,408.00
	$38,256,118.00

Fiscal Year Ended June 30, 1911.

170 EXHIBIT No. 2.

Schedule No. 2.

List Showing the Description and Number of Each Class or Kind of Rolling Stock Belonging to the Illinois Central Railroad Company, Showing the Average Value and the Total Value of the Same:

Description.	No.	Average.	Total value.
Locomotives—All Classes	1,458	$8,305.45	$12,109,348.00
Passenger Cars	527	3,261.37	1,718,357.00
Sleeping Cars	.....	.....	.....
Dining Cars	17	11.530.29	196,015.00
Cafe Cars	19	10,049.11	190,933.00
Parlor Cars	14	9,398.21	131,575.00
Chair Cars	68	6,025.76	409,752.00
Special Cars	13	6,821.08	88,674.00
Pay Cars	.....	.....	.....
Express Cars	165	2,795.85	461,316.00
Baggage, Mail and Express Cars	.....	.....	.....
Combination Cars	70	2,180.86	152.660.00
Box Cars	29,834	420.24	12,537,445.00
Stock Cars	778	229.90	178,866.00
Coal Cars	21,777	410.53	8,940,194.00
Flat Cars	2,709	407.32	1,103.433.00
Tank Cars	10	863.30	8,633.00
Ballast Cars	179	280.81	50,265.00
Caboose Cars	659	284.99	187.808.00
Dump Cars	.....	.....	.....
Pile Driver Cars	8	1,366.50	10,932.00
Wrecking Cars	25	3,030.96	75,774.00
Tool and Working Cars	1,513	150.00	226,950.00
Steam Shovel Cars	9	2,377.22	21,395.00
Push Cars	870	21.50	18,705.00
Hand Cars	870	28.50	24.795.00
All other kinds of Cars	368	297.12	109,341.00
Postal Cars	41	5,667.78	232,379.00
Total Value of Rolling Stock	.....	.....	$39,185,545.00

Class.	Total value.
Engines	$12,109,348.00
Passenger Cars	3,581,661.00
Freight Cars	23,494,536.00
Total	$39,185,545.00

Fiscal Year Ended June 30, 1912

171 Affidavits referred to in Item 10 of Stipulation filed May 4, 1914 are not copied as same are included in Bill of Evidence prepared by respective counsel and approved by the court.

Affidavits referred to in Item 11 of Stipulation filed May 4, 1914 are not copied for same reason.

Exhibits with Bill in case #769, this case, are copied immediately following the Bill of Complaint herein.

On the same day to-wit, defendant filed two Stipulations, same being referred to in the foregoing order which are as follows, to-wit:

United States District Court for the Eastern District of Kentucky.

No. 731.

ILLINOIS CENTRAL RAILROAD COMPANY, Plaintiff,
versus
H. M. BOSWORTH, etc., Defendants.

Stipulation.

(Filed May 4, 1914.)

It is agreed between the party plaintiff and the parties defendant that the affidavits hereinafter set out shall be received and considered as proof in case No. 731 involving the assessment of plaintiff's franchise for the year 1912, and in case No. 769 involving plaintiff's franchise for the year 1913, the same as if the substance of said affidavits was contained in depositions legally taken under the law and rules of this court, the said affidavits being offered by the defendants, but the plaintiff reserves the right to object to the consideration of said affidavits solely upon the ground of incompetency or irrelevancy.

The affidavits above referred to are as follows:

1. Rufus Williams, ex-Assessor, Webster County.
2. W. J. Landrum, ex-Assessor, Breathitt County.

172 3. J. C. Pepples, ex-Assessor, Lincoln County.

4. H. F. Rodgers, ex-Assessor, Calloway County.
5. Noah B. Wooton, ex-Assessor, Leslie County.
6. J. A. Burres, ex-Assessor, Grayson County.
7. W. D. Curry, ex-Assessor, Green County.
8. C. C. McDonald, ex-Assessor, Knox County.
9. Boone Gosney, ex-Assessor, Campbell County.
10. T. G. Willis, ex-Assessor, Boone County.
11. W. T. Druen, ex-Assessor, Larue County.
12. Jno. A. Rice, J. F. Rice, Henry Thompson, W. E. Turner, ex-Deputy Assessors, Bell County.
13. R. H. Miller, ex-Assessor, Bullitt County.
14. T. W. Payne, ex-Assessor, Carlisle County.
15. J. M. Padgett, ex-Assessor, Scott County.
16. W. H. C. Seale, ex-Assessor, Lee County.
17. White Kemplin, ex-Assessor, Morgan County.
18. L. M. Van Bibber, ex-Assessor, Greenup County.
19. L. J. Harris, ex-Assessor, Christian County.
20. Geo. E. Allen, ex-Assessor, McCracken County.
21. Ben Jones, ex-Assessor, Bath County.
22. Kellie Beshears, ex-Assessor, Caldwell County.
23. T. C. Bradley, ex-Assessor, Fayette County.
24. James Proctor, ex-Assessor, Rockcastle County.
25. C. R. Marshall, ex-Assessor, Pendleton County.
26. W. R. Calbert, ex-Assessor, Trimble County.
27. J. M. Wolford, ex-Assessor, Adair County.

28. John Ingles, ex-Assessor, Harrison County.
29. G. O. Johnson, ex-Assessor, Ballard County.
30. Geo. W. Nicholas, ex-Assessor, Hickman County.
31. M. E. Lee, ex-Assessor, Hardin County.
32. Henry R. Childs, ex-Assessor, Mason County.
33. J. P. Mayfield, ex-Assessor, Pulaski County.
34. G. W. Brown, ex-Assessor, Hancock County.
35. J. M. Sparks, ex-Assessor, Robertson County.
36. Alex. Hamilton, ex-Assessor, Estill County.
37. Sheridan Gibbs, ex-Assessor, Johnson County.
38. B. W. Haynes, ex-Assessor, Meade County.
39. W. G. McClintock, ex-Assessor, Bourbon County.
40. Hubert Hinkle, ex-Assessor, Nelson County.

173 41. Elijah Hart, ex-Assessor, Fleming County.
42. M. Abele, ex-Assessor, Kenton County.
43. T. H. White, ex-Assessor, McLean County.
44. Levi Oliver, ex-Assessor, Lyon County.
45. Wiley S. Boyd, ex-Assessor, Graves County.
46. A. J. Silcox, ex-Assessor, Whitley County.
47. S. H. Byars, ex-Assessor, Todd County.
48. S. I. Taylor, ex-Assessor, Madison County.
49. C. W. Ramsey, ex-Assessor, Taylor County.
50. W. H. Bruner, ex-Assessor, Laurel County.
51. W. P. Johnson, ex-Assessor, Shelby County.
52. Edward A. Barry, ex-Assessor, Jefferson County.
53. Eugene Stark, ex-Assessor, Simpson County.
54. W. S. Blankenship, ex-Assessor, Boyd County.
55. J. R. Watkins, ex-Assessor, Marshall County.
56. F. R. Grisson, ex-Assessor, Monroe County.
57. L. D. B. Abele, ex-Assessor, Union County.
58. W. S. Carrier, ex-Assessor, Garrard County.
59. Robert H. Thomas, ex-Assessor, Crittenden County.
60. Elzie Voorhies, ex-Assessor, Mercer County.
61. George Royalty, ex-Assessor, Breckinridge County.
62. Woodson Mills, ex-Assessor, Clay County.
63. L. G. Brown, ex-Assessor, Rowan County.
64. C. C. Mitchell, ex-Assessor, Floyd County.
65. S. F. Raymer, ex-Assessor, Edmonson County.
66. R. L. Mitchell, ex-Assessor, Anderson County.
67. Geo. M. Adams, ex-Assessor, Letcher County.
68. J. W. Mills, ex-Assessor, Casey County.
69. W. P. Johnson, ex-Assessor, McCreary County.
70. H. L. Jones, ex-Assessor, Metcalfe County.
71. C. A. Blandford, ex-Assessor, Marion County.
72. Columbus Cooper, ex-Assessor, Lewis County.
73. G. A. Crabtree, ex-Assessor, Powell County.
74. E. Cassity, ex-Assessor, Jessamine County.

M. M. LOGAN,
Ass't Att'y General, for Defendant.
BLEWETT LEE,
TRABUE, DOOLAN & COX,
For Plaintiff.

174 United States District Court, Eastern District of Kentucky.

ILLINOIS CENTRAL RAILROAD COMPANY, Plaintiff,
versus
H. M. BOSWORTH, etc., Defendants.

Stipulation Nos. 731, 769.

(Filed May 4, 1914.)

It is stipulated between Illinois Central Railroad Company, plaintiff, and H. M. Bosworth, et al., defendants, that on final hearing in case No. 731 and No. 769 between above-named parties, the following documents and affidavits hereinafter specified may be read in evidence and considered and treated without objection as evidence, the said affidavits of the affiants being treated as depositions of the affiants duly taken.

1. Affidavit of H. M. Bosworth filed on hearing for preliminary injunction.

2. Affidavit of T. S. Rhea filed on hearing for preliminary injunction.

3. Affidavit of C. F. Crecelius filed on motion for preliminary injunction.

175 4. Cross-examination of G. W. Lamb on hearing before the Board when considering assessment of L. & N. R. R. Co. for year 1913.

5. Any one affidavit that may be filed by defendant controverting affidavit of G. W. Lamb filed in the L. & N. cases for 1913.

6. Report of Board of Equalization for 1904.

7. Auditor's report for 1904 and 1905.

8. Report of Tax Commission appointed December 21, 1908.

9. Commercial Valuation of Railroads, Bulletin No. 21 Census Bulletin of date August 1, 1905.

10. Affidavit of A. B. Jones and reports thereto attached.

11. 61 and 62 Annual Report of I. C. R. R. Co. to stockholders.

12. Affidavit of H. M. Bosworth on hearing for preliminary injunction in case No. 769.

13. Affidavits filed in L. & N. R. R. hearing before the Board of Valuation and Assessment, 1913, showing ratio of assessed value to real value of Kentucky property for 1912 and 1913.

TRABUE, DOOLAN & COX,
Of Counsel for Plaintiff.
M. M. LOGAN,
Asst. Att'y General, for Defendants.

176 The seventy-four affidavits of ex-assessors referred to in defendants' Stipulations filed on May 4, 1914, are not copied as same are embraced in Bill of Evidence prepared by the counsel and approved by the court.

The Affidavits of Bosworth, Rhea and Crecelius referred to in de-

fendants' Stipulations of May 4, 1914 are copied in case #731 to which they refer & are copied in this case, by agreement of counsel. See pages 183, 193, 204-213.

Cross examination of G. W. Lamb referred to in Item 4 of said Stipulation is not copied as same is embraced in Bill of Evidence prepared by the counsel and approved by the court.

Affidavit referred to in Item 5 of said Stipulation never filed.

Reports referred to in Items 6, 7, 8, and 9 of said Stipulation are included in Bill of Evidence prepared by the counsel and approved by the court.

Affidavit of A. B. Jones referred to in said Stipulation are embraced in Bill of E idence prepared by the Counsel and approved by the court. The reports referred to therein are as follows:

177 *Report of the Illinois* Railroad *Central Railroad Company to the Auditor of Public Accounts of Kentucky, June* 30, 1908.

The amount of capital stock, preferred and common, of said corporation, company or association, as of date June 30, 1908.

Preferred, None; Common, $95,040,000.

Bonded indebtedness	$159,819,275.00
Other indebtedness	$42,119,613.82
Total indebtedness	$201,938,888.82

Rate of Interest paid 3 to 5 per cent.

State separately the total amount of gross and net earnings, or income of the said corporations, company or association, including interest on investments, and income from all other sources for twelve months next before June 30, 1908.

Gross earnings or income			$56,704,847.21
Less Expenses.	Salaries	.....	
	Wages & Expenses	38,456,947.12	
	Interest and rents fixed.	7,007,135.13	
	Dividends	6,651,481.00	
	Appropriated to renewal of equipment	1,046,963.00	
	Maintenance of equipment	.....	
	Depreciation	.....	
	Other Expenses	3,410,753.35	
	Total		$56,573,289.60
Net Income			131,557.61

178 Illinois Central Railroad Company.

Statement Showing Results of Operation of Whole Line and of the Road Located in Kentucky for the Year Ended June 30, 1908.

	I. C. System.	Kentucky.
Operating Revenues	$52,830,426.83	$6,604,469.13
Operating expenses	37,893,478.82	5,176,202.47
Net Operating Revenue	14,936,948.01	1,428,266.66
Outside Operations-Net Deficit	3,906.90	1,321.28
Total Net Revenue	14,933,041.11	1,426,945.38
Taxes	2,190,173.02	199,508.78
Operating Income	12,742,868.09	1,227,436.60
Other Income	3,878,327.28	92,793.31
Gross Corporate Income	16,621,195.37	1,320,229.91
Rents for lease of Other Roads	2,437,645.13	52,039.70
Other Rents	563,468.30	256,462.34
Interest on Funded Debt	4,569,490.00	897,708.99
Other Interest	1,053,240.06	.....
Other Deductions	2,261.62	161.13
Net Corporate Income	7,995,090.26	113,857.75
Appropriated to Renewal of equipment	1,046,963.00	129,090.54
Suspended Claim Account	165,078.65	.....
Net Applicable to Dividends	6,783,048.61	15,232.79 Def.

Additions and Betterments for the whole line aggregate $7,339,694.87, which was all charged to capital, additions and Betterments in Kentucky aggregate $268,895.38.

The foregoing is true and correct to the best of my knowledge, information and belief.

J. F. TITUS,
Assistant to the President.

STATE OF ILLINOIS,
County of Cook, ss:

Subscribed and sworn to before me this 30th day of September, 1908.

[SEAL.] GLEN N. ANDREWS,
Notary Public.

My Commission expires Aug. 15, 1909.

179 *Report of the Illinois Central Railroad Company to the Auditor of Public Accounts of Kentucky, June 30, 1909.*

The amount of capital stock, preferred and common, of the said corporation, company or association, as of date June 30, 1909.

Preferred, None; Common, $109,296,000.00.

Bonded Indebtedness	$179,819,275.00
Other Indebtedness	16,768,129.37
Total Indebtedness	195,587,404.37

Rate of Interest paid 3 to 5 per cent.

State separately the total amount of gross and net earnings, or income of said corporation, company or association, including interest on investments, and income from all other scourses for twelve months next before June 30, 1909.

Gross earnings or income			$57,766,371.73
Less Expenses.	Salaries	39,254,122.95	Op. Ex. & O. Rents.
	Wages & Expenses	7,697,981.44	
	Dividends	7,642,995.50	
	Enlargement of Plant	.....	
	Appropriated to replacement	232,266.92	
	Depreciation	.....	
	Other Expenses	2,841,995.52	
	Total		$57,669,362.33
Net Income			97,009.40

180 Illinois Central Railroad Company.

Statement Showing Results of Operation of the Whole Line and of Road Located in Kentucky for the Year Ended June 30, 1909.

	I. C. System.	Kentucky.
Operating Revenue	$53,672,336.28	$6,605,722.42
Operating Expenses	38,415,638.63	4,955,149.17
Net Operating Revenue	15,256,697.65	1,650,573.25
Outside Operations-Net Deficit	33,793.64	4,394.56
Total Net Revenue	15,222,904.01	1,646,178.69
Taxes	2,276,969.15	200,951.85
Operating Income	12,945,934.86	1,445,226.84
Other Income	4,127,829.09	79,697.09
Gross Corporate Income	17,073,763.95	1,524,923.93
Rents for lease of Other Roads	2,680,158.11	52,039.70
Other Rents	838,484.32	195,915.64
Interest on Funded Debt	5,017,823.33	897,703.69
Other Interest	361,059.44	.....
Other Deductions	126.93	.....
Net Corporate Income	8,176,111.82	379,264.90
Appropriated to Replacement of Equipment	232,266.92	28,615.28
Interest Paid on Tennessee Central R. R. Co. Securities During Option Period	203,840.00	44,600.19
Net Applicable to Dividends	7,740,004.90	306,049.43

Additions and Betterments for the Whole Line aggregate $1,435,275.95 which was all charged to capital; Additions and Betterments in Kentucky aggregating $59,423.79.

The foregoing is true and correct to the best of my knowledge, information and belief.

J. F. TITUS,
Assistant to the President.

STATE OF ILLINOIS,
County of Cook, ss:

Subscribed and sworn to before me this 20th day of September A. D., 1909.

[SEAL.] GLENN N. ANDREWS,
Notary Public.

My Commission expires August 14, 1913.

181 *Report of the Illinois Central Railroad Company to the Auditor of Public Accounts of Kentucky, June 30, 1910.*

The amount of capital stock, preferred and common, of said corporation, company or association, as of date June 30, 1910.

Preferred, None; Common, $109,296,000.00.

Bonded Indebtedness	$179,819,275.00
Other Indebtedness	15,466,905.03
Total Indebtedness	195,286,180.03

Rate of Interest paid 3 to 5 per cent.

182 Illinois Central Railroad Company.

Statement Showing Results of Operation of the Whole Line and the Road Located in Kentucky for the Year Ended June 30, 1910.

	I. C. System.	Kentucky.
Operating Revenue	$57,884,721.09	$7,497,753.01
Operating Expenses	43,320,730.39	5,529,706.13
Net Operating Revenue	14,563,990.70	1,968,046.88
Outside Operations-Net Deficit	34,418.23	5,185.85
Total Net Revenue	14,529,572.47	1,962,861.03
Taxes	2,524,898.68	221,992.03
Operating Income	12,004,673.79	1,740,869.00
Other Income	4,065,104.59	86,365.79
Gross Corporate Income	16,069,778.38	1,827,234.79
Rents for Lease of Other Roads	2,041,526.22	52,039.70
Other Rents	653,979.52	283,004.29
Other Interest	57,284.96	.....
Other Deductions	64,330.00	.....
Interest on Funded Debt	5,369,490.00	897,689.29
Net Corporate Income	7,883,167.68	594,501.51

The foregoing is true and correct to the best of my knowledge, information and belief.

J. F. TITUS,
Assistant to the President.

STATE OF ILLINOIS,
County of Cook, ss:

Subscribed and sworn to before me this 29th day of September, A. D., 1910.

[SEAL.] GLENN N. ANDREWS,
Notary Public.

My Commission expires August 14th, 1913.

183 The Affidavit of Henry M. Bosworth filed in case #731 and referred to in Stipulation filed herein is as follows, to-wit:

District Court of the United States for the Eastern District of Kentucky.

No. 731.

ILLINOIS CENTRAL RAILROAD COMPANY, Complainant,
versus
HENRY M. BOSWORTH, THOMAS S. RHEA, CARL F. CRECELIUS, Individually and as Constituting the Board of Valuation and Assessment of the Commonwealth of Kentucky, et al., Defendants.

Affidavit of Henry M. Bosworth.

The affiant, Henry M. Bosworth, says that by virtue of his office as Auditor of Public Accounts of the Commonwealth of Kentucky, he is now, and has been since the first Monday in January, 1912, a member of the State Board of Valuation and Assessment.

He says that the duties of said Board are fully defined and set out in the Kentucky Statutes, and that under the Statutes it is made the duty of said Board each year to ascertain and assess for taxation the franchise of various public service corporations doing business in the State of Kentucky, among which is complainant.

184 Affiant says that as required by law, said Board met for the year 1912, for the purpose of fixing a tentative or preliminary value upon the franchise of such corporations, and that the tentative assessment of the complainant's franchise in Kentucky was fixed at the value of $21,500,000, and that this value was arrived at from a consideration of the report made to the Auditor of Public Accounts by complainant, as required by the provisions of the Kentucky Statutes; that if the franchise of complainant for the years previous to 1912 was of the same value as the franchise for the year 1912, that in the honest judgment of the Board acting in 1912, the franchise had been greatly undervalued; that after the notice of the tentative assessment made by said Board had been given to complainant, that complainant appeared before the Board and protested against said assessment and introduced certain proof, all of which was heard and considered by the Board; that after a careful consideration of all the facts and of all the proof introduced by

complainant before the Board, and all exhibits filed before the Board, the Board was of the opinion, in the exercise of an honest judgment, that the value of complainant's franchise in Kentucky for the year 1912 should be fixed at the sum of $14,746,857, and in the judgment of the Board the fair cash value of complainant's franchise in Kentucky for the year 1912, estimated at the price it would bring at a fair voluntary sale was not less than the sum aforesaid, at which it was fixed in the final assessment; that said assessment was not and is not exorbitant or extravagant, and was not made arbi-
185 trarily or without reference to the real value of said franchise, and that the financial condition of the State of Kentucky had no influence with the Board in arriving at the value of said franchise, and was not considered by the Board.

Affiant says that if it is true that the State of Kentucky is in financial straits, and stands in need of money, and that the Legislature at its session in 1912, made many and extravagant appropriations, making it necessary for the State to have an increased amount of money, that this fact, if it is a fact, was not considered by the Board in making the assessment of complainant's franchise for the year 1912, and was not considered by the Board, but that the Board had no purpose in mind at the time of making said assessment other than to reach a true and correct value of complainant's franchise, estimated at the price it would bring at a fair voluntary sale, and that the sum at which the value was fixed, in the judgment of the Board is not greater than the true cash value of said franchise, estimated at the price it would bring at a fair voluntary sale.

Affiant says that it is true that a public utilities bill was introduced before the Legislature at its session in 1912, and that same was defeated, but he says that this fact was not considered by the Board and had no influence with the Board in estimating the value of complainant's franchise for the year 1912, and affiant says that he did not, either publicly or privately make any statements or promises to any person or persons that he, or the Board, would increase the franchise of public service corporations in the State of Ken-
186 tucky including the complainant, to such an amount as would cause them to bear more than a just proportion of the burdens of taxation in Kentucky, and that in assessing the franchise of such corporation in Kentucky, including the complainant, the Board sought to the best of its skill and judgment to fix a fair valuation upon the franchises of each of said corporations, and to make each of them bear a just and fair proportion of the burdens of taxation, and no greater proportion than individual taxpayers and other corporations in the State of Kentucky, and that all of such public service corporations, including the complainant, were treated exactly alike in so far as it was possible so to do by the Board, and that if there is any discrimination between any of such corporations in estimating and fixing the value of the franchise, it was wholly unintentional on the part of the Board, and is not substantial.

Affiant says that in order that the Board might have facts and figures before it showing the value of complainant's franchise, as

well as the franchise of other like corporations, it did employ John L. Rich to assist it in obtaining certain facts and figures, and to aid in making calculations; that the only assistance rendered by Justus Goebel was in assisting said Rich in obtaining certain facts and making certain calculations; that the work done by said Rich for the Board was done at the instance and the request of the Board, and under the direct supervision of the Board, and that all facts or figures or information submitted to the Board by the said Rich or by the said Goebel, who was assisting said Rich as a dis-
187 interested taxpayer of the State of Kentucky, were investigated personally by the Board, and not considered by the Board unless found by the Board personally to be correct; that the said Rich and the said Goebel, acting under the direction of the Board, and under its personal supervision, aided in figuring out the result of complainant's franchise in accordance with the directions given by the Board, and that in making said assessment of complainant's franchise the Board acted upon its own information ascertained by it to be correct, and the Board itself, and no other person or persons determined the value of complainant's franchise in Kentucky; that the authority to ascertain and fix the value of complainant's franchise was not delegated by the Board to said Goebel and Rich, and the ascertainment of the value of said franchise was not done largely or wholly by them, or by them at all, and that their recommendations were not adopted by the Board as its conclusions without proper consideration by the members of the Board as to the requirements of the law with respect to the elements lawfully to be considered in determining the valuation of said franchise for assessment in Kentucky.

Affiant says that the said Board in fixing the value of complainant's franchise for assessment for the year 1912, did not ignore the Statutes of Kentucky, in such cases made and provided, requiring them to fix the value of complainant's entire capital stock and to then deduct therefrom the value of complainant's total tangible property in the State of Kentucky, and to apportion the residue thus resulting according to mileage or the length of complainant's
188 railroad within the State of Kentucky as compared with its total mileage of rails in and outside of said State, but, on the other hand, affiant says that the Board sought to follow strictly the Statutes of Kentucky in such cases made and provided, and that in arriving at the value of complainant's franchise in Kentucky the said Board ascertained the total capital stock of complainant on both the stock and bond plan and by capitalizing the net income of complainant on a percentage of six per cent, and that after having done so, the Board took into consideration the length of lines owned, leased, operated or controlled in Kentucky and owned, leased or controlled in Kentucky and elsewhere, and considered this fact in ascertaining the value of the capital stock that should be apportioned to Kentucky.

Affiant says that there was no discrimination between complainant and other corporations of the same class, or at all, in estimating the value of complainant's franchise, but that the Board sought to

be just and fair to all such corporations, and to assess them all upon the same basis, and that in making the assessment of complainant's franchise for the year 1912 that the Board did not in the case of other like corporations follow a method in estimating the value of the franchise that was more favorable to such other corporations than to complainant.

Affiant says that after notice of the tentative assessment had been given to complainant, that through its counsel it appeared and filed as evidence before said Board a statement showing the method that complainant conceived to be a proper method for the Board
189 to follow in estimating the value of complainant's franchise for the year 1912, and said statement is filed herewith and made a part hereof marked "Exhibit No. 1," and that in addition complainant filed another statement, showing another method of ascertaining the value of complainant's franchise, and the value of complainant's property in Kentucky, which is also filed herewith and made a part hereof marked "Exhibit No. 2."

Affiant says that from the statement filed before the Board by the complainant it was shown that on the stock and bond plan the total capital stock of complainant was of the value of $330,139,534, and that it was admitted that the proportion of the lines owned, leased, operated and controlled in Kentucky bears to the total mileage of lines owned, leased and controlled in Kentucky and elsewhere the ratio of 12.3 per cent, and that upon this basis the value of the capital stock of complainant in Kentucky is $40,607,164; that the tangible property assessed for taxation in Kentucky is $12,377,384, which, when deducted from the value of the capital stock in Kentucky, leaves a value of complainant's franchise in Kentucky on this basis of calculation and apportioned on strictly a mileage basis, of $28,229,780.

Affiant says that the Board also capitalized the net income of complainant for the year 1911, at six per cent on the basis of the net income shown in complainant's report to the Board, and that in this way the Board found the value of the total capital stock of complainant to be $239,717,400, and that on the basis of the admitted ratio of 12.3 per cent the value of the capital stock of com-
190 plainant in Kentucky for the year 1912, is $29,485,240, and deducting the value of the tangible property in Kentucky, to-wit, $12,377,383, leaves the value of complainant's franchise on that basis of calculation $17,107,857.

Affiant says that the Board considered each of these methods, but did not apportion values absolutely on a mileage basis, but took into consideration the other evidence introduced before the Board showing that the value of complainant's property in Kentucky per mile was not as great as the value of complainant's property outside of Kentucky, and after a careful consideration of all these facts, the value of complainant's franchise was reduced to $14,746,857, which, in the judgment of the Board, was not more than the fair cash value of complainant's franchise estimated at the price it would bring at a fair voluntary sale.

HENRY M. BOSWORTH.

STATE OF KENTUCKY,
County of Franklin:

This day personally appeared before me, H. B. Ware, a notary public in and for Franklin County, Ky., Henry M. Bosworth, one of the defendants herein, who made oath that the statements in the foregoing affidavit are true.

Witness my hand this 18th day of November, 1912.

[SEAL.] H. B. WARE,
Notary Public in and for Franklin County, Kentucky.

(Filed November 20, 1912, J. W. Menzies, U. S. Clerk.)

191 "EXHIBIT #1."

1912 Ky. Franchise Asst. on 564 Mi. R. R. Owned by C., St. L. & N. O. R. R. Co., Operated by I. C. R. R. Co. under Lease and Ky. Act.

Sec. 6052. "The Board shall fix the value of "Capital Stock" as provided in Sec. 6053, deduct Tangible Asst. Remainder is Franchise Asst.

Sec. 6053. For Foreign Corp. except R. R., "The Board shall fix the Value of "Capital Stock" in Ky. by capitalizing Ky. Net, or find System Cap. Stk. Val. (by capitalizing System Net) and prorate same to Ky. on Gross Receipts basis; deduct Tangible Asst.—Remainder is Franchise Asst.

Sec. 6053. For Domestic or Foreign R. R.—"The Board shall fix the Value of "Capital Stock" as hereinbefore provided, and prorate same to Ky. on Mileage Basis. Deduct Tang. Asst.—Remainder is Franchise Asst.

Meaning of "Capital Stock"—99 Ky. 623—76 Ills. 561—125 N. Y. 433 112 Fed. Rep. 611.

System Mileage 5463, Ky. Mileage 563 ..... 12.3%
" Gross $60,977,031—Ky. Gross $7,622,738 ..... 12.4%

System Net.

1907		$12,750,121
1908		12,742,868
1909		12,945,935
1910		12,004,674
1911		14,393,049
Av	5)	64,836,647
Cap. at	6)	12,967,329
System Cap.		216,122,100
Ky. %		12.35%
Ky. Cap.		26,691,085
Equalize at		58.4%
		$15,587,594
Deduct Tang.		12,377,383
Franchise Asst.		3,210,211

Or, $5,692 per Mile.

System Assets as per Balance Sheet	$330,139,534.04	
Deduct as Irrelevant to Ky. Mileage	112,043,198.78	
	$218,096,335.28	
Ky. %	12.3	
	26,325,849	
Equalize at	58.4%	
	15,666,295	
Deduct	12,377,383	Tang. Asst.
Remainder	3,288,912	Fran. Asst.

(Here follows "Exhibit #2," marked page 192.)

193 Supplemental Affidavit of Henry M. Bosworth filed in case #731 and referred to in Stipulation filed herein is as follows, to-wit:

United States District Court for the Western District of Kentucky.

No. 731.

ILLINOIS CENTRAL RAILROAD COMPANY, Complainant,
versus
H. M. BOSWORTH, Auditor, et al., Defendants.

Supplemental Affidavit of H. M. Bosworth.

(Filed May 4, 1914.)

The affiant, H. M. Bosworth, as a member of the State Board of Valuation and Assessment, in order to show more fully the method followed by the Board in ascertaining the value of the complainant's franchise in Kentucky for the year 1912, says, that from the report made by complainant to the Auditor of Public Accounts, as required by law, for the year 1912, the Board found that the total value of the capital stock of complainant on the stock and bond plan was $330,139,534, and that the percentage that the mileage owned, operated, leased and controlled in Kentucky bears to the total mileage owned, operated, leased and controlled by complainant was admitted to be 12.3 per cent and that by taking 12.3 per cent of the total
194 capital stock as aforesaid, the Board found the value of the capital stock in Kentucky to be $40,607,164, from which it deducted the assessed tangible property of complainant in Kentucky, and found that on this calculation the value of complainant's franchise in the State of Kentucky for the year 1912 was shown to be $28,229,780.

Affiant says that from the aforesaid report made to the Auditor of Public Accounts, the Board found that the net income of complainant for its whole system was $14,383,044, and that by capitalizing this sum at 6 per cent the Board found the capital stock of complainant to be $239,717,400 on this plan, and that it then took 12.3 per cent of this sum, which gave the value of the capital stock of complainant in Kentucky as $29,485,240, and from this sum the Board deducted the assessed tangible property in Kentucky, $12,377,384, and found that the value of complainant's franchise on this plan for the year 1912 was shown to be $17,107,857; that after ascertaining the value of complainant's capital stock in the State of Kentucky on each of these plans, the Board then combined the value of the capital stock in Kentucky found on the stock and bond plan, to-wit, $40,607,164, and the value of complainant's capital stock in Kentucky found by capitalizing the net income, to-wit, $29,485,240, which gave the sum of $70,092,404, which sum was divided by two,

and gave as a result $35,046,202, which the Board found to be the true value of complainant's capital stock in Kentucky.

195 Affiant says that the Board considered proof as to value of terminals outside and inside the State of Kentucky, and all other proof that was introduced before the Board, and finally fixed the value of complainant's capital stock in the State of Kentucky for the year 1912, at the sum of $27,124,240, or at 77 per cent of the actual value of complainant's capital stock in Kentucky as found by the Board, and from this sum deducted $12,377,383, the assessed value of the complainant's tangible property in the State of Kentucky, and fixed the value of complainant's franchise in the State of Kentucky at the sum of $14,746,857, which is only 65 per cent of the actual value of complainant's franchise as found by the Board.

Affiant says that the Board had before it the net income of complainant derived from business done in Kentucky, and the net income derived in Kentucky and elsewhere, as well as the gross income derived from business done in Kentucky, and the gross income derived from business done in Kentucky and elsewhere, and upon a calculation the Board found that the percentage of net income derived on business done in Kentucky to the net income derived from business done in Kentucky and elsewhere bore about the same percentage as the mileage in Kentucky and elsewhere, but slightly more, and that the gross income derived from business done in Kentucky, and from business done in Kentucky and elsewhere, bore about the same percentage to each other as the mileage in Kentucky bore to the total mileage, but slightly more, and after a careful consideration

196 the Board was of the opinion that the mileage basis was approximately the correct basis on which to apportion values to Kentucky although if the net income basis and the gross income basis had been considered, the capital stock in Kentucky would have been found slightly more than $35,046,202, and that the value of the capital stock of complainant in Kentucky as fixed by the Board, to-wit, $27,046,202, is certainly not more than 80 per cent of the total value of complainant's capital stock in the State of Kentucky.

HENRY M. BOSWORTH.

STATE OF KENTUCKY,
County of Franklin:

This day personally appeared before me, H. B. Ware, a Notary Public in and for Franklin County, Kentucky, Henry M. Bosworth, one of the defendants herein, who made oath that the statements of the foregoing affidavit are true.

Witness my hand this 7th day of December, 1912.

H. B. WARE,
Notary Public, Franklin County, Kentucky.

My Commission expires January 15, 1916.

197 *Kentucky—Data in Re* 1912 *Franchise Ass't in Federal Court.*

1911 "Capital Stock" Assessment.....	$16,843,993	
Tangible	12,333,673	—Paid on.
Franchise	4,510,320	—Paid on.
1912 "Capital Stock" Assessment.....	$27,124,240	
Tangible	12,377,383	—Paid on.
Franchise	14,746,857	—In Litigation.

Tarbet's Blue Print, Presented to Bd. of V. & A. May 10, 1912.

Average Ky. Net for last 5 years.....	$1.612,131	
Capitalized at 6%.....	26,868,850	
Stock & Bond Value.....	25,855,154	
Present Worth by Reproduction.....	25,675,918	
Average	26,133,307	
Equalize at	56.8%	(Our 20 counties only.)
Kentucky "Cap. Stock" Value for ass't....	14,843,718	
Deduct Tangible	12,377,383	
Franchise	2,466.335	

Tarbet's Typewritten Statement, Presented to Bd. of V. & A. June 20, 1912.

Ave. System Net for last 5 years.....	$12,967,329	
Capitalized at 6%.....	216,122,100	
Kentucky Mileage Prorate.....	12.35	
Kentucky "Capital Stock" Value.....	26,691,085	
Equalize at	58.4%	(Our 20 counties only.)
Ky. "Capital Stock" Assessment.....	15,587,594	
Deduct Tangible	12,377.383	
Franchise	3,210,211	

New Presentation, all System Values Prorated to Kentucky.

	Ky. prorate of "cap. stk." value.	
1. From System Net.....	$26,583,024	
2. From Reproduction	28,563,536	
3. From Stock & Bonds.....	26,347,898	
4. From Balance Sheet.....	26,825,849	
Average Ky. "Capital Stock" Value.....	27,080.077	
Equalize at	50%	(State wide ratio.)
Ky. "Capital Stock" Assessment.....	13,549,038	
Deduct Tangible	12,377,383	
Franchise.....	1,162,655	

Equalization.	U. S. Census figures—ratio assessment to value. 1900.	1904.	1910.
All Kentucky Taxable.....	50.3%	48.3%	.....
" " Realty	62.8	62.2	.....
" " Personalty	34.5	32.2	.....
" " Farm Property.	63.4	.....	51.6%

Reports of State Board of Equalization corroborate this showing.

The Equalization Ratio used in the blueprint, 56.8%, was the average of 79 admissions by county officials and men of affairs in their 20 respective counties. McCracken County showed 38.5% and Webster County showed only 27.5%. Mr. Rhea protested that those counties were not assessed lower than 50%; so for the sake of argument I substituted 50% for each of those counties notwithstanding the admissions of the men best informed in their own counties, and so raised the average 58.4% in the typewritten statement.

198 Kentucky Franchise Assessment, 1912.

To Ascertain Value of "Capital Stock" of 564 Miles of R. R. Operated in Kentucky by I. C. R. R. Co. and Fairly Equalized Assessment of Same.

First Method.

Net Income from Operation of System 4,551 *Miles, I. C. R. R.*

1907	$12,750,121
1908	12,742,868
1909	12,945,935
1910	12,004,674
1911	14,393,049
Ave	5)64,836,647
Cap. at	6%)12,967,329
	216,122,150
	12.3
Ky. Mileage pro	26,583,024
Equalize at	60%
Ky. Cap. Stk	15,949,814
Deduct Tang	12,377,383
Franchise	3,572,431

199 Second Method.

Cost to Reproduce the Physical Property of I. C. System as per Affidavits.

R. R	$318,129,000
Equipment	38,256,118
	356,385,118
	12.3
Kentucky's Mileage pro rate	43,835,369

But, present worth of one average Kentucky mile as per affidavits $51,027, and present worth of 4,551 miles at $51,027	232,223,877
Present worth of system as above	356,385,118
System value at $51,027 per mile	232,223,877
Excess outside Kentucky	124,161,241
	12.3
Kentucky's pro. of Excess	15,271,833
Ky. straight mileage pro rate	43,835,369
Deduct pro rate of Excess	15,271,833
Val. of "Cap. Stock" in Ky	28,563,536
Equalize at	60%
	17,138,122
Deduct Tangible	12,377,383
	4,760,739

But, this is Estimated Cost, not Value.

200 Third Method.

	Par value.			Market or appraised.
I. C. Common Stock	$109,296,000—	1911 at	132	$144,270,720
I. C. Debenture 4%	9,989,700—	at	5	7,991,760
Funded Debt, Ave. 3.7 Outstanding / Total Int. $5,866,450	157,093,000—	at	5	116,248,820
				268,511,300
But this represents all the property of the Corporation, including $54,300,746.49 worth of property that is separate and distinct from the 4,551 miles of R. R. operated as per affidavit of M. P. Blauvelt. Deduct this				54,300,746
Remainder representing the 4,511 Mi. R. R.				214,210,554
				12.3
Ky. Mileage pro rate				26,347,898
Equalize at				60%
				15,808,739
Deduct Tangible				12,377,383
Remainder, Franchise				3,431,356

201 Fourth Method.

Assets footing of balance Sheet	$330,139,534
Deduct amount irrelevant to mileage operated, as per affidavit of M. P. Blauvelt	112,043,198
	218,096,336
Ky. Mileage pro rate	12.3%
	26,825,849
Equalize at	60%
	16,095,509
Deduct Tangible	12,377,383
Franchise	3,718,126

202 *Combining Kentucky's "Capital Stock" Valuations.*

First Method	$26,583,024
Second Method	28,563,536
Third Method	26,347,898
Fourth Method	26,825,849
	4) 108,320,307
Average	27,080,077
Equalize at	60%
	16,248,046
Deduct Tangible	12,377,383
Or $6,863 per mile.	3,870,663

203 *Equalization.*

In 1912 we secured the sworn statements of men of affairs in twenty Illinois Central Counties in Kentucky stating their opinions as to the ratio of assessment to real value prevailing in their respective counties. These seventy-nine opinions showed an average of 53.9% in said twenty counties.

Advanced sheets of U. S. Census Report 1910 showed the value of all farms and farm property, including improvements, live stock and implements, In Kentucky $773,797,880. The report of the Kentucky State Board of Equalization shows that this property was assessed at $399,554,313, or 51.6% of the value; and this property comprised about 43% of the aggregate assessment of all taxable property in the State. This same property showed an assessment in 1900 63.4% of value. As the 1900 assessment was 63.4% of real value,

and the 1910 assessment was but 51.6%, it may be assumed that the present assessment is less than 50% of the value.

Pages 38 to 41 inclusive of Volumn on Wealth, Debt, and Taxation of Federal Census show that Realty was assessed in Kentucky in 1900 at 62.8%, in 1904 at 62.2%; that Personalty was assessed in 1900 34.5%, in 1904 at 32.2%; that all taxable property was assessed in 1900 at 50.3%, in 1904 at 48.3%.

The foregoing, taken in connection with the reports of the State Board of Equalization, lead to the conclusion that Kentucky taxable property is habitually and generally assessed on the average at approximately 50% of real value.

Analysis of Aggregate Assessment of All Property Subject to Ad Valorem Taxation in Kentucky, Showing % That Each Class is of the Total of All Taxable Property.

	Aggregate assessment	Of whole.
Lands	351,555,618	33.92%
Lots	286,524,845	27.65%
Personalty, not equalized	83,468,030	8.05%
Personalty, equalized	124,905,527	12.05%
Railroads	109,938,195	10.61%
Franchises of Miscel. Corporations	17,975,958	1.74%
Banks & Trust Companies	29,146,142	2.81%
	1,036,319,517	100.00%

204 Affidavit of Thomas S. Rhea filed in case #731 and referred to in Stipulation filed herein is as follows, to-wit:

District Court of the United States for the Eastern District of Kentucky.

No. 731.

ILLINOIS CENTRAL RAILROAD COMPANY, Complainant,
versus
HENRY M. BOSWORTH, THOMAS S. RHEA, CARL F. CRECELIUS, Individually and as Constituting the Board of Valuation and Assessment of the Commonwealth of Kentucky, et al., Defendants.

Affidavit of Thomas S. Rhea.

The affiant, Thomas S. Rhea, says that by virtue of his office as Treasurer of the Commonwealth of Kentucky, he is now and has been since the first Monday in January, 1912, a member of the State Board of Valuation and Assessment.

He says that the duties of said Board are fully defined and set out in the Kentucky Statutes, and that under the Statutes it is made the duty of said Board each year to ascertain and assess for taxation the

franchise of various public service corporations doing business in the State of Kentucky, among which is complainant.

205 Affiant says that as required by law, said Board met for the year 1912, for the purpose of fixing a tentative or preliminary value upon the franchise of such corporations, and that the tentative assessment of the complainant's franchise in Kentucky was fixed at the value of $21,500,000, and that this value was arrived at from a consideration of the report made to the Auditor of Public Accounts by complainant, as required by the provisions of the Kentucky Statutes; that if the franchise of complainant for the years previous to 1912 was of the same value as the franchise for the year 1912, that in the honest judgment of the Board acting in 1912, the franchise had been greatly undervalued; that after the notice of the tentative assessment made by said Board had been given to complainant, that complainant appeared before the Board and protested against said assessment and introduced certain proof, all of which was heard and considered by the Board; that after a careful consideration of all the facts and of all the proof introduced by complainant before the Board, and all exhibits filed before the Board, the Board was of the opinion, in the exercise of an honest judgment, that the value of complainant's franchise in Kentucky for the year 1912 should be fixed at the sum of $14,746,857, and in the judgment of the Board the fair cash value of complainant's franchise in Kentucky for the year 1912, estimated at the price it would bring at a fair voluntary sale was not less than the sum aforesaid, at which it was fixed in the final assessment; that said assessment was not and is not exorbitant or extravagant, and was

206 not made arbitrarily or without reference to the real value of said franchise, and that the financial condition of the State of Kentucky had no influence with the Board in arriving at the value of said franchise, and was not considered by the Board.

Affiant says that if it is true that the State of Kentucky is in financial straits, and stands in need of money, and that the Legislature at its session in 1912 made many and extravagant appropriations, making it necessary for the State to have an increased amount of money, that this fact, if it is a fact, was not considered by the Board in making the assessment of complainant's franchise for the year 1912, and was not considered by the Board, but that the Board had no purpose in mind at the time of making said assessment other than to reach a true and correct value of complainant's franchise, estimated at the price it would bring at a fair voluntary sale, and that the sum at which the value was fixed, in the judgment of the Board is not greater than the true cash value of said franchise, estimated at the price it would bring at a fair voluntary sale.

Affiant says that it is true that a public utilities bill was introduced before the Legislature at its session in 1912, and that same was defeated, but he says that this fact was not considered by the Board and had no influence with the Board in estimating the value of complainant's franchise for the year 1912, and affiant says that he did not, either publicly or privately make any statements or promises to any person or persons that he, or the Board, would increase the

franchise of public service corporations in the State of Ken-
207 tucky, including the complainant, to such an amount as would cause them to bear more than a just proportion of the burdens of taxation in Kentucky, and that in assessing the franchise of such corporations in Kentucky, including the complainant, the Board sought to the best of its skill and judgment to fix a fair valuation upon the franchise of each of said corporations, and to make each of them bear a just and fair proportion of the burdens of taxation, and no greater proportion than individual taxpayers and other corporations in the State of Kentucky, and that all of such public service corporations, including the complainant, were treated exactly alike in so far as it was possible so to do by the Board, and that if there is any discrimination between any of such corporations in estimating and fixing the value of the franchise, it was wholly unintentional on the part of the Board, and is not substantial.

Affiant says that in order that the Board might have facts and figures before it showing the value of complainant's franchise, as well as the franchise of other like corporations, it did employ John L. Rich to assist it in obtaining certain facts and figures, and to aid in making calculations; that the only assistance rendered by Justus Goebel was in assisting said Rich in obtaining certain facts and making certain calculations; that the work done by said Rich for the Board was done at the instance and the request of the Board, and under the direct supervision of the Board, and that all facts or figures or information submitted to the Board by the said Rich or by the said Goebel, who was assisting said Rich as a
208 disinterested taxpayer of the State of Kentucky, were investigated personally by the Board, and not considered by the Board unless found by the Board personally to be correct, that the said Rich and the said Goebel, acting under the direction of the Board, and under its personal supervision, aided in figuring out the result of complainant's franchise in accordance with the directions given by the Board, and that in making said assessment of complainant's franchise, the Board acted upon its own information ascertained by it to be correct, and the Board itself, and no other person or persons determined the value of complainant's franchise in Kentucky; that the authority to ascertain and fix the value of complainant's franchise was not delegated by the Board to said Goebel and Rich, and the ascertainment of the value of said franchise was not done largely or wholly by them, or by them at all, and that their recommendations were not adopted by the Board as its conclusions without proper consideration by the members of the Board as to the requirements of the law with respect to the elements lawfully to be considered in determining the valuation of said franchise for assessment in Kentucky.

Affiant says that the said Board in fixing the value of complainant's franchise for assessment for the year 1912 did not ignore the Statute of Kentucky, in such cases made and provided, requiring them to fix the value of complainant's entire capital stock and to then deduct therefrom the value of complainant's total tangible

property in the State of Kentucky, and to apportion the resi-
209 due thus resulting according to mileage or the length of complainant's railroad within the State of Kentucky as compared with its total mileage of rails in and outside of said State, but, on the other hand, affiant says that the Board sought to follow strictly the Statutes of Kentucky in such cases made and provided, and that in arriving at the value of complainant's franchise in Kentucky the said Board ascertained the total capital stock of complainant on both the stock and bond plan and by capitalizing the net income of complainant on a percentage of six per cent, and that after having done so, the Board took into consideration the length of lines owned, leased, operated or controlled in Kentucky, and owned, leased or controlled in Kentucky and elsewhere, and considered this fact in ascertaining the value of the capital stock that should be apportioned to Kentucky.

Affiant says that there was no discrimination between complainant and other corporations of the same class, or at all, in estimating the value of complainant's franchise, but that the Board sought to be just and fair to all of such corporations, and to assess them all upon the same basis, and that in making the assessment of complainant's franchise for the year 1912, that the Board did not in the case of other like corporations follow a method in estimating the value of the franchise that was more favorable to such other corporations than to complainant.

Affiant says that after notice of the tentative assessment had been given to complainant, that through its counsel it appeared and filed as evidence before said Board a statement showing the method
210 that complainant conceived to be a proper method for the Board to follow in estimating the value of complainant's franchise for the year 1912, and said statement is filed with affidavit of Henry M. Bosworth herein and is referred to and made a part hereof marked "Exhibit No. 1," and that in addition complainant filed another statement, showing another method of ascertaining the value of complainant's franchise, and the value of complainant's property in Kentucky, which is also filed with the affidavit of Henry M. Bosworth herein and is referred to and made a part hereof marked "Exhibit No. 2."

Affiant says that from the statement filed before the Board by the complainant it was shown that on the stock and bond plan the total capital stock of complainant was of the value of $330,139,534, and that it was admitted that the proportion of the lines owned, leased, operated and controlled in Kentucky bears to the total mileage of lines owned, leased and controlled in Kentucky and elsewhere the ratio is 12.3 per cent, and that upon this basis the value of the capital stock of complainant in Kentucky is $40,607,164; that the tangible property assessed for taxation in Kentucky is $12,377,384, which, when deducted from the value of the capital stock in Kentucky, leaves a value of complainant's franchise in Kentucky on this basis of calculation and apportioned on strictly a mileage basis of $28,229,780.

Affiant says that the Board also capitalized the net income of complainant for the year 1911 at six per cent on the basis of
211 the net income shown in complainant's report to the Board, and that in this way the Board found the value of the total capital stock of complainant to be $239,717,400, and that on the basis of the admitted ratio of 12.3 per cent the value of the capital stock of complainant in Kentucky for the year 1912 is $29,485,240, and deducting the value of the tangible property in Kentucky, to-wit, $12,377,383, leaves the value of complainant's franchise on that basis of calculation $17,107,857.

Affiant says that the Board considered each of these methods, but did not apportion values absolutely on a mileage basis, but took into consideration the other evidence introduced before the Board showing that the value of complainant's property in Kentucky per mile was not as great as the value of complainant's property outside of Kentucky, and after a careful consideration of all these facts, the value of complainant's franchise was reduced to $14,746,857, which in the judgment of the Board, was not more than the fair cash value of complainant's franchise estimated at the price it would bring at a fair voluntary sale.

THOMAS S. RHEA.

STATE OF KENTUCKY,
County of Franklin:

This day personally appeared before me, H. B. Ware, a Notary Public in and for Franklin County, Kentucky, Thomas S. Rhea, one of the defendants herein, who made oath that the statements in the foregoing affidavit are true.

212 Witness my hand this 19th day of November, 1912.

[SEAL.] H. B. WARE,
Notary Public in and for Franklin County, Kentucky.

My Commission expires January 15, 1916.
(Filed November 20, 1912, J. W. Menzies, U. S. Clerk.)

213 Affidavit of Carl F. Crecelius filed in case #731 and referred to in Stipulation filed herein is as follows, to-wit.

District Court of the United States for the Eastern District of Kentucky.

No. 731.

ILLINOIS CENTRAL RAILROAD COMPANY, Complainant,
versus
HENRY M. M. BOSWORTH, THOMAS S. RHEA, CARL F. CRECILIUS, Individually and as Constituting the Board of Valuation and Assessment of the Commonwealth of Kentucky et al., Defendants.

Affidavit of Carl F. Crecelius.

The affiant, Carl F. Crecelius, says that by virtue of his office as Secretary of State of the Commonwealth of Kentucky, he is now and has been since the first Monday in January, 1912, a member of the State Board of Valuation and Assessment.

He says that the duties of said Board are fully defined and set out in the Kentucky Statutes, and that under the Statutes it is made the duty of said Board each year to ascertain and assess for taxation the franchise of various public service corporations doing business in the State of Kentucky, among which is complainant.

214 Affiant says that as required by law, said Board met for the year 1912, for the purpose of fixing a tentative or preliminary value upon the franchise of such corporations, and that the tentative assessment of the complainant's franchise in Kentucky was fixed at the value of $21,500,000, and that this value was arrived at from a consideration of the report made to the Auditor of Public Accounts by complainant, as required by the provisions of the Kentucky Statutes; that if the franchise of complainant for the years previous to 1912 was of the same value as the franchise for the year 1912, that in the honest judgment of the Board acting in 1912, the franchise had been greatly undervalued; that after the notice of the tentative assessment made by said Board had been given to complainant, that complainant appeared before the Board and protested against said assessment and introduced certain proof, all of which was heard and considered by the Board; that after a careful consideration of all the facts and of all the proof introduced by complainant before the Board, and all exhibits filed before the Board, the Board was of the opinion, in the exercise of an honest judgment, that the value of complainant's franchise in Kentucky for the year 1912 should be fixed at the sum of $14,746,857, and in the judgment of the Board the fair cash value of complainant's franchise in Kentucky for the year 1912, estimated at the price it would bring at a fair voluntary sale was not less than the sum aforesaid, at which it was fixed in the final assessment; that said assessment

215 was not and is not exorbitant or extravagant, and was not made arbitrarily or without reference to the real value of said franchise, and that the financial condition of the State of

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Kentucky had no influence with the Board in arriving at the value of said franchise, and was not considered by the Board.

Affiant says that if it is true that the State of Kentucky is in financial straits, and stands in need of money, and that the Legislature at its session in 1912 made many and extravagant appropriations, making it necessary for the State to have an increased amount of money, that this fact, if it is a fact, was not considered by the Board in making the assessment of complainant's franchise for the year 1912, and was not considered by the Board, but that the Board had no purpose in mind at the time of making said assessment other than to reach a true and correct value of complainant's franchise, estimated at the price it would bring at a fair voluntary sale, and that the sum at which the value was fixed, in the judgment of the Board is not greater than the true cash value of said franchise, estimated at the price it would bring at a fair voluntary sale.

Affiant says that it is true that a public utilities bill was introduced before the Legislature at its session in 1912, and that same was defeated, but he says that this fact was not considered by the Board and had no influence with the Board in estimating the value of complainant's franchise for the year 1912, and affiant says that he did not, either publicly or privately make any statements or promises to any person or persons that he, or the Board, would increase the franchise of public service corporations in the
216 State of Kentucky, including the complainant, to such an amount as would cause them to bear more than a just proportion of the burdens of taxation in Kentucky, and that in assessing the franchise of such corporations in Kentucky, including the complainant, the Board sought to the best of its skill and judgment to fix a fair valuation upon the franchise of each of said corporations, and to make each of them bear a just and fair proportion of the burdens of taxation, and no greater proportion than individual taxpayers and other corporations in the State of Kentucky, and that all of such public service corporations, including the complainant, were treated exactly alike in so far as it was possible so to do by the Board, and that if there is any discrimination between any of such corporations in estimating and fixing the value of the franchise, it was wholly unintentional on the part of the Board, and is not substantial.

Affiant says that in order that the Board might have facts and figures before it showing the value of complainant's franchise, as well as the franchise of other like corporations, it did employ John L. Rich to assist it in obtaining certain facts and figures, and to aid in making calculations; that the only assistance rendered by Justus Goebel was in assisting said Rich in obtaining certain facts and making certain calculations; that the work done by said Rich for the Board was done at the instance and the request of the Board, and under the direct supervision of the Board, and that all facts or figures or information submitted to the Board by the said Rich or by the said Goebel, who was assisting said Rich as a dis-
217 interested taxpayer of the State of Kentucky, were investigated personally by the Board, and not considered by the

Board unless found by the Board personally to be correct; that the said Rich and the said Geobel, acting under the direction of the Board, and under its personal supervision, aided in figuring out the result of complainant's franchise in accordance with the directions given by the Board, and that in making said assessment of complainant's franchise, the Board acted upon its own information ascertained by it to be correct, and the Board itself, and no other person or persons determined the value of complainant's franchise in Kentucky; that the authority to ascertain and fix the value of complainant's franchise was not delegated by the Board to said Goebel and Rich, and the ascertainment of the value of said franchise was not done largely or wholly by them, or by them at all, and that their recommendations were not adopted by the Board as its conclusions without proper consideration by the members of the Board as to the requirements of the law with respect to the elements lawfully to be considered in determining the valuation of said franchise for assessment in Kentucky.

Affiant says that the said Board in fixing the value of complainant's franchise for assessment for the year 1912 did not ignore the Statutes of Kentucky, in such cases made and provided, requiring them to fix the value of complainant's entire capital stock and to then deduct therefrom the value of complainant's total tangible property in the State of Kentucky, and to apportion the residue thus resulting according to mileage or the length of complainant's
218 railroad within the State of Kentucky as compared with its total mileage of rails in and outside of said State, but, on the other hand, affiant says that the Board sought to follow strictly the Statutes of Kentucky in such cases made and provided, and that in arriving at the value of complainant's franchise in Kentucky the said Board ascertained the total capital stock of complainant on both the stock and bond plan and by capitalizing the net income of complainant on a percentage of six per cent, and that after having done so, the Board took into consideration the length of lines owned, leased, operated or controlled in Kentucky, and owned, leased or controlled in Kentucky and elsewhere, and considered this fact in ascertaining the value of the capital stock that should be apportioned to Kentucky.

Affiant says that there was no discrimination between complainant and other corporations of the same class, or at all, in estimating the value of complainant's franchise, but that the Board sought to be just and fair to all of such corporations, and to assess them all upon the same basis, and that in making the assessment of complainant's franchise for the year 1912 that the Board did not in the case of other like corporations follow a method in estimating the value of the franchise that was more favorable to such other corporations than to complainant.

Affiant says that after notice of the tentative assessment had been given to complainant, that through its counsel it appeared and filed as evidence before said Board a statement showing the method
219 that complainant conceived to be a proper method for the Board to follow in estimating the value of complainant's

franchise for the year 1912, and said statement is filed with the affidavit of Henry M. Bosworth herein and is referred to and made a part hereof marked "Exhibit No. 1," and that in addition complainant filed another statement, showing another method of ascertaining the value of complainant's franchise, and the value of complainant's property in Kentucky, which is also filed with the affidavit of Henry M. Bosworth herein and is referred to and made a part hereof marked "Exhibit No. 2."

Affiant says that from the statement filed before the Board by the complainant it was shown that on the stock and bond plan the total capital stock of complainant was of the value of $330,139,534, and that it was admitted that the proportion of the lines owned, leased, operated and controlled in Kentucky bears to the total mileage of lines owned, leased and controlled in Kentucky and elsewhere the ratio of 12.3 per cent, and that upon this basis the value of the capital stock of complainant in Kentucky is $40,607,164; that the tangible property assessed for taxation in Kentucky is $12,377,384, which, when deducted from the value of the capital stock in Kentucky, leaves a value of complainant's franchise in Kentucky on this basis of calculation and apportioned on strictly a mileage basis of $28,229,780.

Affiant says that the Board also capitalized the net income of complainant for the year 1911 at six per cent on the basis of the
220 net income shown in complainant's report to the Board, and that in this way the Board found the value of the total capital stock of complainant to be $239,717,400, and that on the basis of the admitted ratio of 12.3 per cent, the value of the capital stock of complainant in Kentucky for the year 1912 is $29,485,240, and deducting the value of the tangible property in Kentucky, to-wit, $12,377,383, leaves the value of complainant's franchise on that basis of calculation $17,107,857.

Affiant says that the Board considered each of these methods, but did not apportion values absolutely on a mileage basis, but took into consideration the other evidence introduced before the Board showing that the value of complainant's property in Kentucky per mile was not as great as the value of complainant's property outside of Kentucky, and after a careful consideration of all these facts, the value of complainant's franchise was reduced to $14,746,857, which, in the judgment of the Board, was not more than the fair cash value of complainant's franchise estimated at the price it would bring at a fair voluntary sale.

CARL F. CRECELIUS.

STATE OF KENTUCKY,
County of Franklin:

This day personally appeared before me, H. B. Ware, a Notary Public in and for Franklin County, Kentucky, Carl F. Crecelius, one of the defendants herein, who made oath that the statements in the foregoing affidavit are true.

221 Witness my hand this 18th day of November, 1912.

[SEAL.] H. B. WARE,
Notary Public in and for Franklin County, Kentucky.

My commission expires January 15, 1916.

(Filed November 20, 1912, J. W. Menzies, U. S. Clerk.)

222 Affidavit of Chas. J. Veling filed in case #731 and referred to in Stipulation filed herein is as follows, to-wit:

United States District Court for the Eastern District of Kentucky.

No. 731.

ILLINOIS CENTRAL RAILROAD COMPANY, Complainant,
vs.
H. M. BOSWORTH, THOMAS RHEA and C. F. CRECELIUS, Constituting the Board of Valuation and Assessment for the Commonwealth of Kentucky, Defendants.

Affidavit of Chas. J. Veling.

The affiant, Chas. J. Veling, says that for the year 1912 he acted as Secretary of the State Board of Valuation and Assessment, and that he acted as secretary of said Board at the time the assessment herein complained of was made; that under the supervision and directions of said Board he aided in figuring out the value of the franchise of complainant, based upon the facts before the Board, and that this work was done by him under the immediate directions and supervision of the Board.

Affiant says that he was present when said Board had under consideration the question of fixing the value of complainant's franchise in Kentucky for the year 1912, and he knows that said Board
223 gave full and careful consideration to all evidence before it, and that from the discussions of the Board among themselves, that he knows that the Board in assessing complainant's franchise for the year 1912, attempted, to the best of their skill and judgment, to follow the statutes of Kentucky in making said assessment, and that from the discussions among the members of the Board while considering the question of said assessment, that the said Board sought, to the best of their judgment, to avoid any discrimination either in favor or against complainant, and that from the statements of the members of said Board while considering the question of complainant's franchise for the year 1912, he knows that it was not the intention of said Board to impose any greater burden of taxation upon complainant than a fair and just proportion, when compared to the proportion of the burdens of taxation born- by other classes of property in the State of Kentucky.

Affiant says that he examined the evidence before the Board which was considered by the Board in arriving at the value of complainant's franchise for the year 1912, and that he heard the protest made by complainant against the assessment and some of the arguments offered in support of said protest, and that he gave careful consideration to the provisions of the Kentucky Statutes governing the assessment of complainant's franchise, and that after a careful consideration of all these things, it is the opinion of the affiant that the assessment of complainant's franchise for the year 1912 is fair and

just and not more than the fair cash value of said franchise,
224 estimated at the price it would bring at a fair voluntary sale, and that under said assessment complainant is not required to pay more than a just proportion of taxes, based upon the assessment of the property of other corporations and individuals in the State.

Affiant says that as Secretary of the Board he was required to keep correctly the proceedings of said Board, and that he did keep a correct record of the transactions of said Board; that he correctly and truly entered the judgment or findings of the Board, fixing the value of complainant's franchise for the year 1912, and that said judgment or findings embodies the acts of the Board in making said assessment, and said entry is in all respects true. A copy of the judgment or finding fixing the value of complainant's franchise for the year 1912 is filed herewith and made a part of this affidavit, and for identification is marked "Judgment."

CHAS. J. VELING.

November 18, 1912.

STATE OF KENTUCKY,
County of Franklin, set:

This day personally appeared before me, a Notary Public in and for the county and State aforesaid, Chas. J. Veling, who made oath that the statements in the foregoing affidavit are true.

My commission expires January 15, 1916.

[SEAL.] H. B. WARE,
Notary Public, Franklin County, Kentucky.

225 (Filed November 20, 1912, J. W. Menzies, U. S. Clerk.)

It is resolved by the Board of Valuation and Assessment of Kentucky, after having given full and due onsideration to the returns to the Auditor made by the Illinois Central Railroad Company, a corporation, and, having taken into consideration the gross and net earnings of said Company in Kentucky and elsewhere, and, having considered the proportion the length of the lines owned, operated, leased, or controlled, by said company in Kentucky, bears to the total length of the lines owned, operated, leased, or controlled in this State and elsewhere; and, having considered the value of its shares and the market value thereof, and the amount of its bonded debt; and, having heard and considered all before the Board, including the evidence of the witnesses introduced by the Company and the exhibits filed therewith; and, after having heard and considered the arguments of counsel for the Company, and after said Board ascertained the value of the capital stock of said Company in Kentucky and from the amount thus found did deduct the assessed value of all tangible property assessed in the State of Kentucky, it is the judgment of said Board, all the members thereof concurring therein, that the taxable value of the franchise of said Company, exercised in Kentucky, as so determined, is $14,746,857.00
226 Dollars, and the Board does hereby ascertain and fix the value thereof at said sum or amount for the purpose of taxation and assessment in Kentucky for the year of 1912.

August 31, 1912.

The foregoing resolution was offered by H. M. Bosworth, was seconded by Thos. S. Rhea. Upon call of the roll of the members on the resolution—Bosworth voted yes; Crecelius voted yes; Rhea voted yes.

The Chairman declared the resolution carried and ordered that same be recorded.

Attest:

CHAS. J. VELING, *Secretary.*

(Filed November 20, 1912, J. W. Menzies, U. S. Clerk.)

227 61 annual report of I. C. R. R. Co. to stockholders copied in part as embraced in praecipe in case #731 but not copied in this case and 62 annual report of I. C. R. R. Co. to stockholders copied in part as embraced in praecipe in this case, being referred to in Item 11 of defendants' Stipulation filed May 4, 1914 and is as follows, to wit:

Illinois Central Railroad Company.

Report of the Board of Directors.

To the Stockholders of the Illinois Central Railroad Company:

The following report of the operations and affairs of your Company for the year ended June 30, 1912, is respectfully submitted by the Board of Directors.

The number of miles of road operated on June 30, 1911, was	4,576.09
On May 5, 1911, the Indianapolis Southern Railroad was purchased at a foreclosure sale and since July 1, 1911, its railroad has been operated as part of the Indiana Division of the railroad of your Company	176.94
There was added on July 1, 1911, the Bloomington Southern Railroad mileage formerly operated by the Indianapolis Southern Railroad Company	2.16
There was added on July 1, 1911, the mileage of the Omaha Bridge & Terminal Railway, which was acquired under lease	2.03
Mileage added account of additional trackage rights, revision of line and re-measurements	5.48
The number of miles of railroad operated on June 30, 1912, was	4,762.70
The average number of miles operated during the year was	4,762.70

Income.

The following is the Income Account for the year; and for purposes of comparison the Company's Income Account for the preceding year has been re-stated so as to include the income of the Indianapolis Southern Railroad Company and the Omaha Bridge & Terminal Railway Company.

	1912.	1911.	Increase + Decrease —
Average miles operated during year	4,762 70	4,749 64 +	13 06
Operating revenues:			
Freight	$37,881,765 94	$41,503,985 23 —	$3,622,219 29
Bridge tolls and miscellaneous freight	2,798,905 54	3,132,190 02 —	333,284 48
Passenger	13,337,562 40	13,168,862 89 +	168,699 51
Bridge tolls and miscellaneous passenger	264,728 59	263,226 04 +	1,502 55
Mail	962,848 30	951,591 37 +	11,256 93
Express	1,851,584 23	1,542,381 75 +	309,202 48
Other passenger train	418,748 17	428,692 55 —	9,944 38
Other transportation	769,023 37	678,260 10 +	90,763 27
Revenue from operations other than transportation	442,105 63	419,546 57 +	22,559 06
Total operating revenues	58,727,272 17	62,088,736 52 —	3,361,464 35
Operating expenses:			
Maintenance of way and structures	7,691,214 55	7,750,524 54 —	59,309 99
Maintenance of equipment	13,857,548 66	12,495,332 86 +	1,362,215 80
Traffic expenses	1,400,941 84	1,364,141 41 +	36,800 43
Transportation expenses	23,653,249 18	21,778,530 58 +	1,874,718 60
General expenses	1,518,512 31	1,369,327 31 +	149,185 00
Total operating expenses	48,121,466 54	44,757,856 70 +	3,363,609 84
Net operating revenue	10,605,805 63	17,330,879 82 —	6,725,074 19

THIS PAGE I
VERTICAL II

BOOK

Outside operations:			
Revenues	493,378 32	471,491 13 +	21,887 19
Expenses	600,735 22	527,955 37 +	72,779 85
Net deficit from outside operations	107,356 90	56,464 24 +	50,892 66
Total net revenue	10,498,448 73	17,274,415 58 —	6,775,966 85
Taxes accrued	2,685,730 13	2,720,849 02 —	35,118 89
Operating income	7,812,718 60	14,553,566 56 —	6,740,847 96
Other income	5,403,584 66	6,714,704 88 —	1,311,120 22
Gross corporate income	13,216,303 26	21,268,271 44 —	8,051,968 18
Deductions from gross corporate income	9,749,855 39	9,952,927 52 —	203,072 13
Net corporate income	3,466,447 87	11,315,343 92 —	7,848,896 05
Disposition of net corporate income:			
Dividends on capital stock	.....	7,650,720 00 —	7,650,720 00
Appropriated for additions and betterments	61,481 44	164,847 23 —	103,365 79
Balance transferred to credit of profit and loss	3,404,966 43	3,499,776 69 —	94,810 26

228 *Revenue.*

The business during the year shows a material decrease as compared with the previous year, the latter being the largest in the history of your Company. The principal reasons for the decrease were a strike of the shopmen which began on September 30, 1911, on all of the different lines of your Company and continued as a disturbing factor for several months; an unusually severe winter which seriously affected the movement of traffic on the Northern Lines; and the floods in the spring on the Southern Lines, which not only interrupted traffic but caused a large increase in operating expenses.

The total operating revenues for the current year were $58,727,272.17 which, compared with $62,088,736.52 for the preceding year, shows a decrease of $3,361,464.35, or 5.41 per cent.

Freight transportation revenue decreased $3,622,219.29 or 8.73 per cent. The tons of revenue freight carried decreased from 27,966,035 tons to 26,339,149 tons. Table No. 13 shows the principal commodities transported, as well as a comparison of such commodities with the previous year.

Revenue from the transportation of passengers increased from $13,168,862.89 to $13,337,562.40, or 1.28 per cent. There was an increase in passenger traffic on the Northern and Southern Lines while the Western Lines show a slight decrease.

Table No. 12 shows the general details of the freight and passenger traffic.

General Remarks.

In the spring months, a flood occurred in the southern territory, and for a considerable part of the month of April, the double track line in the south, including the Cairo Bridge, was out of commission. During this period, the passenger trains of your Company, to and from the south, and what small proportion of the freight which could be handled, were detoured over the single track line between Mattoon, Ill., and Fulton, Ky., via Evansville and Princeton.

The several unlooked fr occurrences above named, coming one after the other, so affected the operating results of your Company, that the month of June, 1912, is the first since August, 1911, which shows an increase in net revenue over the preceding fiscal year.

(Here follows Table 4, marked pages 229 and 230.)

(Here follows diagram, marked page 231.)

Assets.

	1912.
Property investment:	
Road and equipment:	
Investment to June 30, 1907	$95,198,029.47
Investment since June 30, 1907	33,307,892.99
Reserve for accrued depreciation—credit	4,245,590.13
Total road and equipment	$124,260,332.33
Securities:	
Securities of proprietary, affiliated and controlled companies—pledged	27,664,070.67
Securities of proprietary, affiliated and controlled companies—unpledged	18,471,116.39
Other investments:	
Advances to proprietary, affiliated and controlled companies for construction, equipment and betterments	61,365,397.91
Miscellaneous investments	37,070,305.60
Total property investment	$268,831,222.90
Working assets:	
Cash	$1,856,735.32
Securities issued or assumed—held in treasury	26,751,080.00
Marketable securities	16,865,789.67
Loans and bills receivable	814,640.40
Traffic and car-service balances due from other companies	.....
Net balance due from agents and conductors	3,170,063.45
Miscellaneous accounts receivable	4,609,572.80
Material and supplies	3,830,794.79
Total working assets	$57,898,676.43
Accrued income not due:	
Unmatured interest, dividends and rents receivable	$1,086,132.78
Deferred debit items:	
Advances	$7,805,897.28
Rents and insurance paid in advance	9,119.98
Special deposits	41,850.00
Cash and securities in insurance and other reserve funds	2,086,259.39
Cash and securities in provident funds	250,000.00
Other deferred debit items	472,806.58
Total deferred debit items	$10,665,933.23
Grand total	$338,481,965.34

TABLE 4.

Illinois Central Railroad Company.

Condensed General Balance Sheet.

June 30, 1912, and Comparison with Previous Year.

Liabilities.	1912.	1911.	Increase.	Decrease.
Stock:				
Common capital stock	$109,296,000.00	$109,296,000.00	.....	.....
Debenture 4% leased line stock	9,989,700.00	9,989,700.00	.....	.....
Total stock	$119,285,700.00	$119,285,700.00	.....	.....
Mortgage, bonded and secured debt:				
Bonded debt	$185,636,000.00	$187,351,000.00	.....	$1,715,000.00
Real estate mortgage	100,000.00	100,000.00	.....	.....
Total mortgage, bonded and secured debt	$185,736,000.00	$187,451,000.00	.....	$1,715,000.00
Total capital liabilities	$305,021,700.00	$306,736,700.00	.....	$1,715,000.00
Working liabilities:				
Loans and bills payable	$5,900,000.00	$200,000.00	$5,700,000.00	.....
Traffic and car-service balances due to other companies	435,161.17	249,186.61	185,974.56	.....
Audited vouchers and wages unpaid	6,582,328.15	5,237,996.97	1,344,331.18	.....
Miscellaneous accounts payable	7,209,177.49	163,163.26	7,046,014.23	.....
Matured interest, dividends and rents unpaid	1,448,261.55	1,397,197.55	51,064.00	.....
Matured mortgage, bonded and secured debt unpaid	9,331.97	10,146.97	.....	$815.00
Other working liabilities	184,898.72	222,224.08	.....	37,325.36
Total working liabilities	$21,769,159.05	$7,479,915.44	$14,289,243.61	.....
Accrued liabilities not due:				
Unmatured interest, dividends and rents payable	$5,395,175.95	$5,246,584.80	$148,591.15	.....
Taxes accrued	330,386.60	277,387.12	52,999.48	.....
Total accrued liabilities not due	$5,725,562.55	$5,523,971.92	$201,590.63	.....
Deferred credit items:				
Operating reserves	$349,972.43	$317,359.38	$32,613.05	.....
Liability on account of provident funds	258,476.43	261,278.79	.....	$2,802.36
Other deferred credit items	276,140.25	803,795.01	.....	527,654.76
Total deferred credit items	$884,589.11	$1,382,433.18	.....	$497,844.07
Grand total liabilities	$333,401,010.71	$321,123,020.54	$12,277,990.17	.....
Appropriated surplus:				
Additions to property since June 30, 1907, through income	$226,328.67	$164,847.23	$61,481.44	.....
Reserve for insurance fund	2,086,259.39	2,067,701.58	18,557.81	.....
Profit and loss:				
Balance	$2,768,366.57	[illegible]783,964.69	.....	$4,015,598.12
Grand total	$338,481,965.34	$330,139,534.04	$8,342,431.30	.....

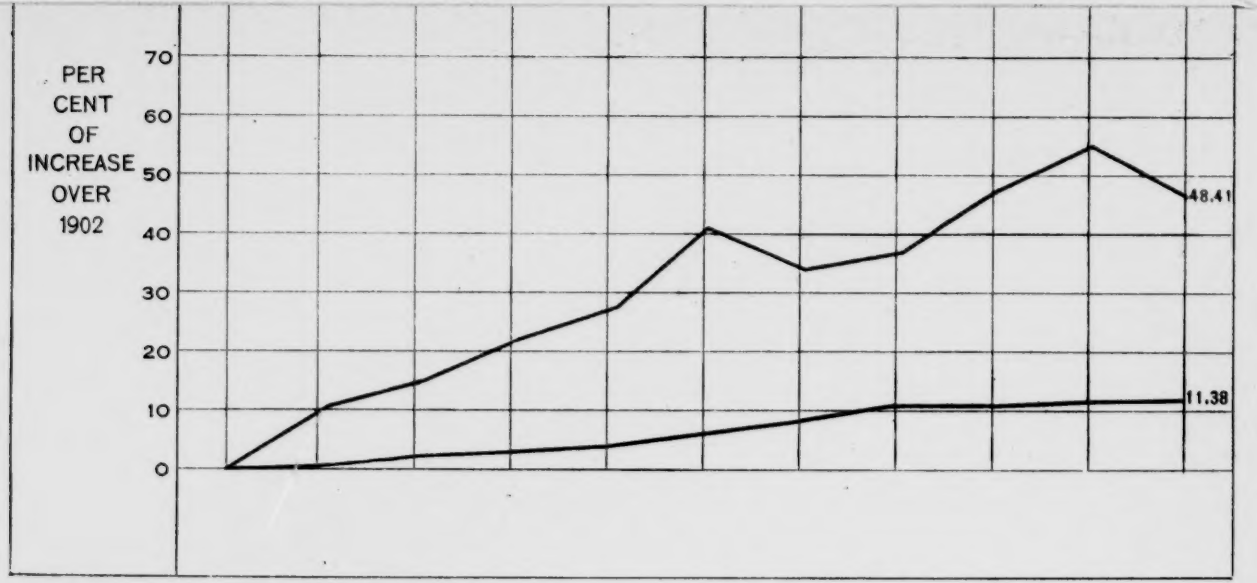
Increase.	Decrease.
$9,444.40	.....
14,152,276.57	.....
.....	$1,441,730.32
$12,719,990.65	.....
.....	.....
10,208.60	.....
.....	3,426,829.34
.....	7,282,672.30
$2,020,697.61	.....
.....	$13,279,125.04
.....	3,514,560.00
$14,538,850.35	.....
591,454.53	.....
.....	73,452.10
1,316,840.58	.....
2,263,479.69	.....
.....	104,234.79
$1,739,253.22	.....
.....	$1,313,894.15
$6,021,313.60	.....
3,843.56	.....
.....	$11,322.04
18,557.81	.....
.....	.....
.....	136,018.31
$5,896,374.62	.....
$8,342,431.30	.....

ILLINOIS CENTRAL RAILROAD COMPANY

Table 15 **Gross Transportation Revenues and Miles of Railway Operated**

Showing by years the per cent of increase over the year ended June 30, 1902, in gross transportation revenues and the per cent of increase in the average miles of railway operated during the year.

YEAR	GROSS TRANSPORTATION REVENUES	MILES OF ROAD
1902	$ 39,903,382.04	4,276.23
1903	" 44,163,606.47	4,292.98
1904	" 46,071,503.77	4,340.35
1905	" 48,898,901.65	4,373.91
1906	" 50,875,770.06	4,423.87
1907	" 56,430,365.57	4,506.98
1908	" 54,054,926.64	4,606.83
1909	" 54,936,200.06	4,733.78
1910	" 59,370,288.44	4,736.91
1911	" 62,560,227.65	4,749.64
1912	" 59,220,650.49	4,762.70



231

Affidavit of H. M. Bosworth referred to in Item 12 of said Stipulation never filed.

232 Affidavits referred to in Item 13 of said Stipulation filed May 4, 1914 are not copied as substance of same are embraced in Bill of Evidence prepared by the counsel and approved by the court.

On June 8, 1914 the following order was made and entered herein, to-wit:

#769.

ILLINOIS CENTRAL RAILROAD COMPANY
vs.
H. M. BOSWORTH et al.

On motion of the plaintiff, by its attorneys, consented to by the defendants, by their attorneys, the affidavit of M. P. Blauvelt filed in clerk's office of this court on May 29, last together with the exhibits therewith are now and hereby filed nunc pro tunc as of May 4, 1914.

Came again the parties by their respective attorneys and filed a stipulation in reference to the evidence of John E. Garner, which stipulation is approved by the Court and the agreements made authorized accordingly.

Said affidavit of Martin P. Blauvelt filed by foregoing order as of May 4, 1914 is as follows, to-wit:

233 United States District Court for the Eastern District of Kentucky.

Nos. 731 and 769.

Consolidated.

ILLINOIS CENTRAL RAILROAD COMPANY, Complainant,
versus
H. M. BOSWORTH, THOMAS RHEA and C. F. CRECELIUS, Constituting the Board of Valuation and Assessment for the Commonwealth of Kentucky, Defendants.

(Filed in Clerk's Office May 29, 1914, and by Order of Court June 8, 1914.)

STATE OF ILLINOIS,
County of Cook, ss:

Affiant, Martin P. Blauvelt, says that he is the Comptroller of the Illinois Central Railroad Company and the same person who has made the affidavits in the above causes and has testified in regard to the value of the franchise of the said complainant, as computed by the stock and bond method.

Affiant further says that the court having intimated that a difference might possibly arise as to the situs for taxation of
234 stocks, bonds, cash, notes, advances and miscellaneous property not derived from railroad operations or used for railroad

purposes, as distinguished from items arising from railroad operations, and that this difference might affect the result of the computations hereinbefore presented in the said cause as exhibits setting forth the claims of the said complainant in regard to its taxable values situated in the State of Kentucky, affiant has caused to be made a true and correct statement showing the amounts of bonds, stocks, cash, notes, advances and miscellaneous property not derived from railroad operations or used for railroad purposes located outside and having their situs outside of the State of Kentucky on June 30, 1911, marked Exhibit (*a*), a copy of which is attached to this affidavit and made a part hereof; also a true and correct statement, marked Exhibit (*b*), of the items arising from railroad operations for the fiscal year ending June 30, 1911, included in Exhibit No. —, heretofore filed in this cause, but excluded in the foregoing statement just referred to, marked Exhibit (*a*); and has also caused to be made a true and correct calculation based upon the stock and bond method in the first case aforesaid, No. 731, in regard to the return data for the fiscal year ending June 30, 1911, and the 1912 assessment, a copy of which is attached to this affidavit and made a part hereof, marked Exhibit (*c*); and in like manner a true and correct statement showing the amounts of stocks, bonds, cash, notes, advances and miscellaneous property not derived from railroad operations or used for railroad pur-

235 poses located and having their situs outside the State of Kentucky on June 30, 1912, marked Exhibit (*d*), a copy of which is attached to this affidavit and made a part hereof; also a true and correct statement, marked Exhibit (*e*), of the items arising from railroad operations for the fiscal year ending June 30, 1912, included in Exhibit No. — heretofore filed in this cause, but excluded in the foregoing statement just referred to marked Exhibit (*d*); and has also caused to be made a true and correct calculation based upon the stock and bond method in the second case aforesaid, No. 768, in regard to the return data for the fiscal year ending June 30, 1912, and the 1913 assessment, a copy of which is attached to this affidavit and made a part hereof, marked Exhibit (*f*).

Affiant further says that the result of the said calculations above referred to is, upon the basis of the stock and bond method as shown in the said exhibits and calculations, that nothing remains for assessment over and above the assessment of tangible property already made and paid to the proper authorities of the State of Kentucky and to the various counties and municipalities thereof, for the said years 1912 and 1913, based upon the said fiscal years ending June 30, 1911, and June 30, 1912, respectively.

MARTIN P. BLAUVELT.

STATE OF ILLINOIS,
County of Cook, ss:

This day personally appeared before the undersigned, a Notary Public in and for the State and county aforesaid, Martin

236 P. Blauvelt, whose signature appears above and is attached hereto, and he made oath that the statements made in the foregoing affidavit are true to the best of his knowledge and belief.

Given under my hand and seal at my office in Chicago, Ill., this 13th day of May, 1914.

[SEAL.]

P. S. HANNAGAN,
Notary Public, Cook County, Ill.

237 Exhibit A with affidavit of Martin P. Blauvelt is as follows, to-wit:

EXHIBIT (A).

Illinois Central Railroad Company.

Statement Showing Amounts of Stocks, Bonds, Cash, Notes, Advances and Miscellaneous Property Not Derived from Railroad Operations or Used for Railroad Purposes Located Outside and Having Their Situs Outside of the State of Kentucky on June 30, 1911.

Stocks.

Items.	Cost or book values.
Jackson Realty Co., Ltd	$5,000.00
Prudential Realty Co., Ltd	5,000.00
Central of Georgia R'y Co	3,474,249.02
Chicago Union Transfer R'y Co	40,000.00
Auditorium Co.	1,000.00
Ben Clare Telephone Co	50.00
United States Rail Co	838.00
Commonwealth Trust Co	7,000.00
Bethlehem Steel Corporation	2,000.00
Marcus Water Works Association	30.10
Mississippi Valley Company	43,125.00
Mississippi Valley Corporation	5,000.00
Indianapolis Southern R. R. Co	128,998.95
Total	$3,712,291.07

238 Bonds.

Indianapolis Southern 1st Mortgage Gold of 1956	$8,777,289.86
Yazoo & Mississippi Valley R. R. Co. Gold 5% of 1952	2,324,488.18
Yazoo & Mississippi Valley R. R. Co. 4% Gold Improvement Bonds and Scrip	5,911,710.07
Peoria & Pekin Union R'y Co. 5% Debenture Bonds	156,500.00
Southern Illinois & Missouri Bridge Co. 4% Bonds of 1951	600,000.00
Tennessee Central R. R. Co. Prior Lien 4% of 1934	1,338,000.00
Homewood Country Club 1st Mtge. 5% of 1927	2,400.00
Total	$19,110,388.11

Cash.

Proceeds of Sale of Bonds	$10,406,700.00

Notes.

Nashville Terminal Realty Co. Notes	$346,102.67
Chicago Union Transfer R'y Co. Judgment Notes	99,121.22
Bills Receivable (New York)	42,000.00
Bills Receivable (Chicago)	4,000.00
Bills Receivable (Land Notes)	70,895.96
Total	$562,119.85

Advances.

Memphis R. R. Terminal Co	$113,970.00
Madison Coal Corporation	1,859,000.00
Omaha Bridge & Terminal Railway Co	1,750,000.00
Mississippi Valley Corporation	3,137,490.27
Mississippi Valley Company	2,500.00
Yazoo & Mississippi Valley R. R. Co	1,653,510.20
Indianapolis Southern R. R. Co	119,464.94
Total	$8,635,935.41

239 Miscellaneous Properties.

Advances account Tennessee Central R. R	$1,328.19
Real Estate adjacent to Tennessee Central R. R.—Outside Kentucky	77,062.03
Real Estate, Chicago and vicinity	256,060.02
Flossmoor Subdivision	116,509.28
Material Leased—Outside Kentucky	157,700.29
Total	$608,659.81

Accounts.

Accounts Receivable in Suspense	$52,529.82
Taxes—Advances account land sales	3,611.91
Total	$56,141.73
Grand Total	$43,092,235.98

240 Exhibit B with affidavit of Martin P. Blauvelt is as follows, to-wit:

EXHIBIT (B).

Items Arising from Railroad Operations, June 30, 1911, Included in Exhibit No. —, Heretofore Filed in Court, but Excluded in Foregoing Statement.

Traffic and Car Service Balances due from Other Companies	$73,458.10
Station Claims in Suspense	104,352.71
Foreign Roads Traffic Claims in Suspense	232,040.68
Freight Claim Agent	44,259.80
Miscellaneous Bills for Collection	1,909,209.00
Due from Foreign Roads account of Traffic Claims	110,269.43
United States Post Office Department	100,860.50
American Express Company	140,092.40
Individuals and Companies for Rents	13,316.65
Individuals and Companies for Advertising	16,203.40
Bills Receivable (Chicago Office)	106,289.91
Cash	4,616,417.80
	$7,466,764.38

241 Exhibit C with affidavit of Martin P. Blauvelt is as follows, to-wit:

EXHIBIT (C).

Revised Calculation, Stock and Bond Method.

1911 Return and Data.

1st Case—No. 731.

Stock and Bond Method:	1912 assessments.
Market Value at average quotations of all Stock and Bonds Outstanding, not in Company's Treasury, and excluding investments in Securities of the L. N. O. & T. Railway	$296,249,519
Less Cost or Book Value of stocks, bonds, cash, notes, advances and miscellaneous property not derived from railroad operations or used for railroad purposes, located and having their situs outside the State of Kentucky	43,092,236
Balance to prorate	253,157,283
Kentucky mileage prorate	12.3%
	31,138,346
61% a/c Excess Value Outside Kentucky	61%
	18,994,391
Equalize at 60%	60%
	11,396,635
Tangible	12,381,773

242 Exhibit D with affidavit of Martin P. Blauvelt is as follows, to-wit:

EXHIBIT (D).

Illinois Central Railroad Company.

Statement Showing Amounts of Stocks, Bonds, Cash, Notes, Advances and Miscellaneous Property Not Derived from Railroad Operations or Used for Railroad Purposes Located and Having Their Situs Outside of the State of Kentucky on June 30, 1912.

Stocks.

Items.	Cost or book value.
Jackson Realty Co., Ltd.	$5,000.00
Prudential Realty Co., Ltd.	5,000.00
Central of Georgia R'y Co.	3,474,249.02
Central Fruit Despatch	1,500,000.00
Chicago Union Transfer R'y Co.	40,000.00
Auditorium Co.	1,000.00
Ben Clare Telephone Co.	50.00
United States Rail Co.	838.00
Commonwealth Trust Co.	7,000.00
Marcus Water Works Association	30.10
Mississippi Valley Company	43,125.00
Mississippi Valley Corporation	5,000.00
Total	$5,081,292.12

243 Bonds.

Yazoo & Mississippi Valley R. R. Co. Gold 5% of 1952	$2,324,488.18
Yazoo & Mississippi Valley R. R. Co. 4% Gold Improvement Bonds and Scrip	6,219,473.28
Peoria & Pekin Union R'y Co. 5% Debenture Bonds	244,000.00
Southern Illinois & Missouri Bridge Co. 4% Bonds of 1951	600,000.00
Tennessee Central R. R. Co. Prior Lien 4% of 1934	1,338,000.00
Central of Georgia R'y Co. 1st Pref. Inc. Bonds of 1945	3,848,189.25
Central of Georgia R'y Co. 2d Pref. Inc. Bonds of 1945	6,589,475.29
Central of Georgia R'y Co. 3d Pref. Inc. Bonds of 1945	4,015,685.81
Homewood Country Club 1st Mtge. 5% of 1927	2,400.00
Total	$25,181,711.81

Notes.

Nashville Terminal Realty Co. Notes	$343,125.17
Chicago Union Transfer R'y Co. Judgment Notes	99,121.22
Tennessee Central R. R. Co. Notes	92,032.62
Bills Receivable (New York)	705,000.00
Bills Receivable (Chicago)	8,500.00
Bills Receivable (Land Notes)	45,359.96
Bills Receivable (Flossmoor)	8,038.79
Total	$1,301,177.76

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Advances.

Memphis R. R. Terminal Co	$112,147.22
Yazoo & Mississippi Valley R. R. Co	2,711,163.57
Madison Coal Corporation	1,859,000.00
Mississippi Valley Corporation	3,025,850.52
Mississippi Valley Company	39,499.25
Southern Property Company	5,357.85
Total	$7,753,018.41

Miscellaneous Properties.

Real Estate adjacent to Tennessee Central R. R.—Outside Kentucky	$77,062.03
Real Estate, Chicago and vicinity	145,771.40
Material leased—Outside Kentucky	223,640.18
Total	$446,473.61

Accounts.

Accounts Receivable—Flossmoor Subdivision	$151,313.53
Taxes—Advances account of Land Sales	2,110.65
Accounts Receivable in Suspense	732,039.19
Total	$885,463.37
Grand Total	$40,649,137.08

245 Exhibit E with affidavit of Martin P. Blauvelt is as follows, to-wit:

EXHIBIT (E).

Items Arising from Railroad Operations, June 30, 1912, Included in Exhibit No. —, Heretofore Filed in Court, but Excluded in Foregoing Statement.

Station Claims in Suspense	$26,611.50
Foreign Roads Traffic Claims in Suspense	93,883.90
Freight Claim Agent	324.54
Miscellaneous Bills for Collection	3,346,886.46
Due from Foreign Roads Account of Traffic Claims	84,317.57
United States Post Office Department	118,434.98
American Express Company	136,650.48
Individauls and Companies for Rents	22,137.35
Individuals and Companies for Advertising	15,581.30
New York Office—Bills for Collection	101.29
Bills Receivable (Chicago Office)	47,741.65
Cash	2,295,057.79
	$6,187,728.81

246 Exhibit F with affidavit of Martin P. Blauvelt is as follows, to-wit:

EXHIBIT (F).

Revised Calculation, Stock and Bond Method.

1912 Return and Data.

2nd Case—No. 768.

Stock and Bond Method:	1913 assessment.
Market Value at average quotations of all Stock and Bonds Outstanding, not in Company's Treasury, and excluding investments in Securities of the L. N. O. & T. Railway	$299,058,719
Less Cost or Book Value of stocks, bonds, cash, notes, advances and miscellaneous property not derived from railroad operations or used for railroad purposes, located and having their situs outside the State of Kentucky	40,649,137
Balance to prorate	258,409,582
Kentucky mileage prorate	12.3%
	31,784,379
61% a/c Excess Value outside Kentucky	61%
	19,388,471
Equalize at 60%	60%
	11,633,083
Tangible	12,478,903

247 Stipulation as to evidence of John Garner filed by foregoing order of June 8, 1914 is as follows, to-wit:

United States District Court, Eastern District of Kentucky, at Frankfort.

No. 731.

ILLINOIS CENTRAL RAILROAD COMPANY, Complainant,
versus
HENRY M. BOSWORTH et al., Defendants.

No. 769.

ILLINOIS CENTRAL RAILROAD COMPANY, Complainant,
versus
HENRY M. BOSWORTH et al., Defendants.

(Filed in Clerk's Office May 29, 1914, and by Order of Court June 8, 1914.)

It is stipulated between complainant and defendants that the evidence of John E. Garner given in open court this June 8, 1914, in the cases of Louisville & Nashville Railroad Company, Chesapeake & Ohio Railway Company and Cincinnati, New Orleans & Texas Pacific Railway Company v. the defendants herein, shall be read in evidence in the cases mentioned in the caption, subject to the same exceptions as in the cases in which said witness testified.

TRABUE, DOOLAN & COX,
Counsel for Complainant.
M. M. LOGAN,
Ass't Att'y General, for Defendants.

The evidence of John E. Garner referred to in the foregoing stipulation is embraced in the Bill of Evidence herein.

248 On August 31, 1915 the following order was made and entered herein, to-wit:

#769.

ILLINOIS CENTRAL RAILROAD COMPANY,
vs.
H. M. BOSWORTH et al.

The foregoing case *ah*ving been generally submitted, and the court having duly considered same and being sufficiently advised filed its written opinion herein, and the attorneys in said case will prepare and submit to the court an order drawn in accordance with said opinion.

Said opinion of the court filed on August 31, 1915 is as follows, to-wit:

249 United States District Court, Eastern District of Kentucky.

ILLINOIS CENTRAL RAILROAD COMPANY, Plaintiff,

vs.

H. M. BOSWORTH, THOMAS S. RHEA, and C. F. CRECELIUS, Individually and as Constituting the Board of Valuation and Assessment of the State of Kentucky; H. M. Bosworth, Auditor of Public Accounts of the State of Kentucky; G. B. Likens, Assistant Auditor of Public Accounts of the State of Kentucky; James Garnett, Attorney General of the State of Kentucky; C. H. Morris, First Assistant Attorney General of the State of Kentucky; M. M. Logan, Second Assistant Attorney General of the State of Kentucky; O. S. Hogan, Third Assistant Attorney General of the State of Kentucky; Victor A. Bradley, Commonwealth's Attorney for the Franklin Circuit Court; and W. C. Marshal, County Attorney of Franklin County, State of Kentucky, Defendants.

This suit is before me for final decree. The plaintiff seeks thereby an injunction against the enforcement of the assessment of its franchise in this state for the year 1913. The amount of the assessment is $11,200,277. When it was brought another suit was pending in which plaintiff sought an injunction against the enforcement of the assessment for the year 1912. That assessment amounted to the sum of $14,746,857, and I sustained a motion therein for a preliminary injunction on condition that the taxes on $6,618,585 be first paid which condition was complied with. In that connection I delivered an opinion reported in 209 Fed. 465. That suit is also before me and is disposed of by separate opinion. Before bringing this suit plaintiff paid the taxes for the year 1913 on the sum of $6,000,000, which left the assessment for enforcement only as to the balance of the $11,200,277. A preliminary injunction was granted on filing the bill.

The details of the assessment showing the manner in which the Board arrived at $11,200,277 as the value of the franchise are these.

It first found the fair cash value of plaintiff's capital stock
250 or unit to be $280,000,000. Just how it arrived at this sum as the fair cash value thereof does not appear. Plaintiff had submitted to it four possible valuations and certain affidavits on which they were based. By the first one the valuation was $199,664,150, which was arrived at by capitalizing at six percent plaintiff's average net income for the five years 1908 to 1912 inclusive; by the second it was $363,975,545 arrived at by estimating the cost at the time to reproduce plaintiff's railroad and equipment less depreciation; by the third it was $274,215,140, arrived at on the stock and bond plan; and by the fourth it was $226,525,163 arrived at by making certain deductions from assets shown by its balance sheet. The Board itself valued it on the stock and bond and capitalization plans and entered same on its minute. By the one its valuation was $317,525,260 and by the other $330,155,500. The latter valuation was arrived at by capitalizing the average of the "total Earn-

ings" of plaintiff for the year- 1909, 1910 and 1911. The statement of its minute in regard to its valuation at $280,000,000 is as follows:

In arriving at the basis for the estimate of the value of the capital stock or property of respondent used in its business, the Board has considered the evidence offered by respondent as to the real value of its road and equipment used in its business and the evidence as to the cost of reproduction. The market and real value of its stock and bonds and the gross and net earnings of respondent within and without Kentucky and all *and all* other matters appertaining thereto. The Board has considered all the evidence offered by respondents and the exhibits filed in connection therewith and upon consideration of all the foregoing and after hearing the arguments of counsel for respondent and after having taken time to thoroughly consider all matter brought out on the hearing it is now adjudged and determined by the Board of Valuation and Assessment that the fair cash value of the total capital stock of the Illinois Central Railroad Company used in its business in Kentucky and elsewhere during the year ending June 30th, 1912 was $280,000,000. The Board then apportioned $34,400,000 of this sum to Kentucky on the mileage basis which it adjudged to be the value of Kentucky's proportion of plaintiff's entire capital stock. The total mileage was 4550.74 of which 563.79 or 12.3 per cent was in Kentucky. But it
251 did not adhere to this sum as the value of the *pro*tion of plaintiff's unit in Kentucky. It reduced it to the sum of $23,679,180 at which it finally fixed it. It stated that it so did "to be conservative and out of an abundance of caution, to the end that no injustice may be done in arriving at the value of the corporate franchise of the respondent in this state" and "on account of the decrease in earnings of the respondent for the year ending June 30th, 1912" and noted the fact that the amount to which it so reduced it was "less tha*t* 80% of its fair cash value." It then deducted from this sum of $23,679,180 the assessed value of the tangible property, to-wit $12,478,903, leaving the balance of $11,200,277 at which it assessed the franchise.

The plaintiff makes two attacks on the action of the Board. One is in its apportioning a part of $280,000,000 to Kentucky on the mileage basis. The other is in its not equalizing the amount so apportioned thereto with the assessment of property generally therein by reducing it 60 per cent of its fair cash value. No attack is made upon the percentage of apportionment which the Board adopted in apportioning. The second attack will have to be sustained on the grounds set forth in my opinion in the L. & N. R. R. Co. cases. In valuing plaintiff's unit at $280,000,000 of which it apportioned to Kentucky $34,400,000 on the mileage basis the Board applied the standard of full fair cash value. It expressly finds $280,000,000 to be the fair cash value thereof. And property generally in this state is not assessed at much more than 60 percent of its fair cash value—probably at not as much as that. In no event, therefore, can the value of the portion of plaintiff's unit in Kentucky be taken to be more than 60 per cent of $34,400,000 or $20,640,000. If taken to be that much and the assessed value of the tangible property, to-wit

$12,478,903 is deducted therefrom the value of plaintiff's franchise will be $8,161,097 or $2,161,067 in excess of what it has already paid.

As to whether it is to be taken to be that much depends
252 on the disposition made of the other attack, which is on the action of the Board in apportioning to Kentucky a part of as much as $280,000,000 on the mileage basis. In considering this attack it is to be borne in mind that this court is exercising what Mr. Justice Holmes characterizes its "extr-ordinary jurisdiction." And that jurisdiction cannot be exercised unless the Board has been guilty of fraud or adopted a fundamental wrong principle. It is not claimed that it was guilty of fraud. So that whether the attack is to be sustained depends on the question whether the Board in so apportioning adopted a fundamentally wrong principle. No fundamental principle is involved in determining whether an interstate unit shall be valued on the capitalization or the stock and bond plan or whether, if the capitalization plan is adopted, what rate of interest shall be used in capitalizing, or how many years' earnings shall be considered in determining the amount to be capitalized or what is the amount of net income for a given year, or if the stock and bond plan is adopted what is the value of the stock and bonds. On all such matters the action of the Board, in the absence of fraud, is absolutely binding on me. I have no right to substitute my judgment for that of the Board. A good deal in the evidence and in the brief of plaintiff has to do with these several matters. It is not necessary in view of this consideration that I take further note of them. Nor is plaintiff in position to claim that its capital stock, i. e. its entire assets, were not worth as much as $280,000,000. As stated it presented to the Board four methods of determining the value of its franchise, the first step in each of which was a valuation of its capital stock. By the net income method it was valued at $199,664,150; by the cost of reproduction less depreciation method at $363,975,545; by the stock and bond method at $274,215,140; and by the balance sheet method at $226,525,163. In connection with the second method
it is to be noted that the valuation did not include the whole
253 of plaintiff's capital stock. It was limited to the value of its plant, i. e. its railroad and equipment. In addition thereto it had securities, book accounts and cash of the book value of $46,-836,866.89. Adding the two together makes a total of $410,812,-411.89. Then on the hearing herein plaintiff introduced evidence as to the value of its capital stock on the net income and stock and bond plans. On the net income plan it was $212,623,300, capitalizing at six per cent, the same percentage at which the capitalization was made before the Board, or $12,959,150, more than what was then claimed. On the stock and bond plan it was $299,058,716, or $24,843,576 more than plaintiff had valued it before the Board. Now while all these valuations except that on the stock and bond plan made in this case and that on the cost of reproduction less depreciation and book value plan are less than the Board's valuation on the stock and bond plan made in this case it is nearly $20,000,-000 more than the sum at which the Board valued it and on the cost

of reproduction less depreciation and book value plan it is over $130,000,000 more.

There are, however, two particulars in which the claim of plaintiff that a part of as much as $280,000,000 should not have been apportioned to Kentucky on the mileage basis involves a fundamental principle. One is that the securities, book accounts and cash amounting to $46,836,666.89 were no part of plaintiff's unit and no part thereof was apportionable to Kentucky. If this contention is sound then $46,836,666.89, if that may be taken as the value of such securities, book accounts and cash, should have been deducted from the $280,000,000 and a part of the remainder only apportioned to Kentucky on the mileage basis. This contention is based on the decisions in Coulter vs. Weir, 127 Fed., Fargo vs. Hart, 193 Fed. But this case does not come within the doctrine of those cases. In the former case the express company instead of distributing certain of its surplus earnings to its stock-holders as dividends invested them in the bonds and stocks of other
254 companies, transferred them to a trust company issued its bonds against them and distributed these bonds to its stock-holders as a dividend. These bonds and stocks were nor used in the company's business and had no other connection therewith except that the company's creditors might in certain contingencies reach them. So in the other case the express company owned certain real estate and personalty which was not used in its business and the only ground for claiming that it was part of its unit was that the ownership of such property gave the company credit. In each case it was held that such property constituted no part of the interstate unit and was not apportionable to states where it was not located. Here there is no evidence whatever that the property in question was not used in and to facilitate plaintiff's business. Everything tends to show that it was so used. The cash included the cash on which it did its regular business. I, therefore, think that the property was a part of plaintiff's interstate unit and that it as well as the rest thereof was apportionable to Kentucky on the mileage basis.

The other particular is that deduction should have been from the sum of $280,000,000 which the Board held to be the fair cash value of plaintiff's capital stock, on account of mileage, outside of Kentucky being more valuable than that inside, before making apportionment to Kentucky. Plaintiff makes out that such excess value existed because the cost of reproduction less depreciation outside exceeded that inside. This was due mainly to terminals at Chicago, New Orleans, Memphis and East St. Louis, as against the terminals at Louisville. The figures are as follows, to-wit: Chicago, $120,660,000; New Orleans, $9,189,000; Memphis, $8,315,000 and East St. Louis, $3,450,000, making total $141,560,000, as against Louisville $3,622,400. And it claims that, leaving out terminals, the mileage outside exceeds that inside as much as $1,000 a mile. It was to obtain a deduction on account of this value that the
255 second method of valuation was presented to the Board. Plaintiff did not claim that its plant was worth what it would take to reproduce it less depreciation. The showing was made

merely for the purpose of showing the existence of such excess value and the extent of it. It claimed thereby that it was entitled to a deduction of $131,751,668 from the total cost of reproduction less depreciation of $363,975,545, leaving a balance of $232,223,877 for apportionment. It would seem that, at least, in the matter of terminals, the mileage outside of Kentucky exceeded in value that inside to a substantial extent. And according to the decision of the Supreme Court of the United States referred to in my opinion in the L. & N. R. R. Co. case no part of such excess value should have been apportioned to Kentucky. I think, however, that it must be taken that the Board made due allowance for this excess value in fixing the fair cash value of plaintiff's capital stock subject to apportionment at $280,000,000; Plaintiff claimed before it that such excess value should not be apportioned. The Board in its minute noted the fact of the claim and that it had been duly considered. The sum which it fixed for apportionment was over $130,000,000 less than the value of Plaintiff's capital stock, taking its plant to be worth the cost of reproduction less depreciation and its other assets at their book value. It was over $50,000,000 less than what the Board valued it at on the capitalization plan; over $37,000,000 less than its valuation on the stock and bond plan and nearly $20,000,000 less than what plaintiff has valued it in this case on that plan. Besides it was only $47,776,123 more than what plaintiff claimed before the Board should be apportioned on account of plaintiff's plant alone, to-wit: $232,223,887. In addition to this there was subject to apportionment, as I have already held, plaintiff's personal assets, the book value of which was $46,836,867—so that the Board apportionad not as much as $1,000,000 more than what was subject to apportionment according to plaintiff's own figures.

256 Besides the Board was shut up to plaintiff's own figures on which it based its claim as to excess value. It was not in position to make such figures itself or to obtain them from others. It had a right to make some allowance on this account on the idea that plaintiff had presented them in the most favorable light to it. The fact that plaintiff presented four different methods of ascertaining the value of the franchise which differed so widely in their results, the difference between the valuation of plaintiff's capital stock on the stock and bond plan and that on the net income plan being as much as $75,000,000 was calculated to make the Board doubtful of its claims. That it was mistaken in the figures which it gave in other particulars has been shown by plaintiff itself in this case. The amount to be deducted on account of the personal assets, if plaintiff was entitled to such deduction, was over $9,000,000 less than plaintiff claimed before the Board; the valuation of plaintiff's capital stock on the capitalization plan was nearly $13,000,000 more; and the valuation on the stock and bond plan was nearly $25,000,000 more.

I am, therefore, constrained to hold that plaintiff is entitled to a decree enjoining the further enforcement of the assessment claimed if in excess of the sum of $2,161,067.

August 31, 1915.

A. M. J. COCHRAN, *Judge.*

257 On September 27, 1915, the following order was made and entered, to-wit:

#769.

ILLINOIS CENTRAL RAILROAD COMPANY
vs.
H. M. BOSWORTH et al.

Upon the call of the Civil Docket of this Court on this date it is ordered that this case be and the same is hereby passed, and in the event no order is made therein the case is hereby continued.

On December 1, 1915, the following petition for re-hearing or modification was filed herein, to-wit:

District Court of the United States, Eastern District of Kentucky.

In Equity. No. 769.

ILLINOIS CENTRAL RAILROAD COMPANY, Complainant,
versus
HENRY M. BOSWORTH et al., Defendants

Petition for Rehearing or Modification.

I.

We are most reluctant to ask even a modification of this court's rulings after so painstaking a consideration by the court of the controversies involved, but are convinced that in the multitude of figures and considerations, the court has overlooked grounds for our relief resulting in injustice to us.

The basis of the opinion is that the defendants first found the fair cash value of complainant's capital stock to be $280,000,000 reached by process undisclosed; that the defendants then apportioned $34,400,000 to Kentucky, on a mileage basis of 12.3%:

"But it did not adhere to this sum as the value of the portion of plaintiff's unit in Kentucky. It reduced it to the sum of
258 $23,679,180 at which it finally fixed it. It stated that it did so 'to be conservative and out of abundance of caution, to the end that no injustice may be done in arriving at the value of the corporate franchise of the respondent in this State,' and on account of the decreases in earnings of the respondent for the year ending June 30, 1912, and noted the fact that the amount to which it so reduced it was 'less than 80% of its fair cash value.'"

Our point is that when the defendants reduced the Kentucky mileage proportion of the $280,000,000 from $34,000,000 to $23,679,180 there was nothing left for this court to do but to accept $23,679,180 and extend equalization at 60% thereon yielding fran-

chise valuation $14,207,508, which less tangible valuation $12,478,-903 yields franchise assessment $1,728,605.

If, as the court says, "I have no right to substitute my judgment for that of the Board," how can the court substitute $34,400,000 for the $23,679,180 which the defendants finally adopted as the fair cash value of complainant's capital stock; in other words 100% of complainant's capital stock.

Indeed, it would have been perfectly inadmissible for the defendants to have adopted $34,400,000, an exact mileage proportion of the total value of the capital stock, $280,000,000, because it was shown by the uncontradicted evidence that there was an excess of 39.2% in the value of the tangible property outside the State, or using exact accuracy, a mile in the State of Kentucky was worth just 60.8% of a mile outside the State. When, then, we see that 60.8% of $34,-400,000 is $20,915,200, it would have been entirely admis-
259 sible for the defendants to reach $20,915,200 as Kentucky's proportion of the capital stock instead of $23,679,180. Indeed we insist that the Board ought to have done so.

Upon $23,679,180 (instead of $34,400,000) we were entitled to an equalization of at least 60%, reaching an assessment of $14,207,-508; which less $12,478,903 valuation of the tangible property yields $1,728,605 as the franchise value for the year 1913.

If we are correct in the conclusion just expressed, were we not entitled to a decree enjoining any assessment in excess of $1,728,605 irrespective of the other matters considered in the opinion. Having already paid taxes on an assessment of $6,000,000 nothing more would be payable.

Moreover, this court finds—

"Just how it (the Board) arrived at this sum as the fair cash value thereof does not appear."

This seems to clinch $23,679,180 as the maximum to be equalized at 60%?

The defendants fixed $280,000,000 as the value of the total capital stock of the complainant, and could not properly adopt a mere mileage basis of this amount, because so to have done would have ignored the excess value of plaintiff's railroad mile for mile outside the State, consisting largely in its terminals. The defendants could not have rightly ignored the uncontradicted evidence introduced by plaintiff showing that a mile in Kentucky was worth only 60.8% of a mile outside the State, so that it was incumbent upon the defend-
260 ants to reduce the mileage proportion of $280,000,000, to-wit, $34,400,000 for Kentucky by 39.2% so as to show the value of the Kentucky mileage, but the defendants did not reduce the $34,-400,000 by 60.8% which reduction would have yielded $20,915,200, but reduced it only to $23,679,180, $2,163,980 more than 60.8%. It was, therefore, proper to adopt the $23,679,180 subject to equalization at 60% of that sum, which would have been $14,207,508.

In the quotation from the defendant's minute made in the court's opinion it is not asserted that the Board made an allowance for the excess value outside the State; but as hereinafter shown the defendants said that they had not done so.

In using the stocks and bonds plan, the defendants did not adopt the real value of the stocks and bonds of complainant as we demonstrated in the evidence, so that the defendants ought to have reduced the result which their methods reached. Likewise, it would have been abhorrent to justice to adhere to the result of an average of three of the most prosperous years of the company's history, excluding the current year, which yielded net income of only about half the next previous year, capitalized at even 8% much less 6%, the rate adopted by the defendants; so that the result of such a method ought to have been largely reduced. Complainant, therefore, gained nothing to which it was not entitled when the defendants adopted $280,000,000 as the value of complainant's total capital stock. Of course, as this court recognizes, and as Mr. Tar-
261 bet swears (Stenog. Bill of Ev. & Excep., p. 128), the reproduction method was simply used to obtain a ratio for determining the excess value outside the State and "plaintiff did not claim that its plant was worth what it would take to reproduce it less depreciation." (Opinion, p. 6.)

We question this conclusion of the court (Opinion, p. 6):

"I think, however, that it must be taken that the Board made due allowance for this excess value in fixing the fair cash value of plaintiff's capital stock subject to apportionment at $280,000,000; plaintiff claimed before it that such excess value should not be apportioned; the Board in its minute noted the fact of the claim and that it had been considered."

This conclusion of the court is absolutely negatived by the Board's own declaration (Aff. and other Ev., p. 10), to-wit:

"In view of the fact, the ratio of gross and net earnings of respondent derived wholly within the State of Kentucky from the operation of its road in Kentucky, for the year ending June 30, 1912, and the next previous fiscal year was equal to the ratio of mileage of respondent in Kentucky, *the Board is of the opinion and finds* that the mileage of respondent in Kentucky is as valuable as the average mileage of the system and the apportionment of the entire capital stock of respondent to Kentucky on a mileage basis for the purpose of ascertaining the value of its franchise is fair and equitable to the State and company." (Italic ours.)

It thus appears that this court's conclusion, that in reducing the valuation of the total capital stock to $280,000,000 from
262 either $317,525,260 (valuation by the stocks and bonds plan), or $330,155,500 (valuation by the net earnings plan), the Board "made due allowance for this excess value," is directly negatived by the Board's own declaration. It is demonstrated, therefore, that the Board did not allow for the excess value in fixing $280,000,000 as the total capital stock value of complainant.

Complainant's constitutional rights, however, entitled complainant to the elimination of such excess value outside the State, and the uncontradicted evidence shows this excess to be 39.2% which, applied to the mileage allotment of $34,400,000, yields $20,915,200 as the value of the capital stock of complainant in Kentucky subject to equalization at 60%, which would yield $12,549,120, just $70,217

more than the assessed value of the tangible property of the company. Complainant has already paid taxes on an assessment of $6,000,000 under the preliminary order of injunction. The right of deduction of the excess value outside the State is a constitutional right of complainant. It is simply the right to be immune from taxation of property in another State. Louisville & Nashville R. R. Co. v. Bosworth, 209 Fed. 380, 426; Opin. Suit No. 775, C. & O. R'y Co. v. Bosworth, August 31, 1915, pp. 7, 9.

In the Opinion No. 775, this court said concerning the excess value outside Kentucky:

"Possibly, if the sole matter involved here were a matter of valuation, I would not have a right to substitute my judgment for that of the Board. * * * Though, as it concerns the valuation of property outside the State—an over-valuation of which would im-
263 port property into the State which does not belong here—I am not so sure of this (p. 7)."

Undoubtedly this court may examine the evidence when we claim a constitutional right. K. C. So. R'y v. Albers, etc., Co., 223 U. S. 573, 591, etc.

Again (still quoting the court):

"Now, in so using it (the L. & N. mileage included) I am not sure that property was not imported into the State in addition to what was imported by not deducting a sufficient sum on account of excess tangible property outside of the State, which importation I have corrected."

The evidence introduced by complainant, showed that the excess value outside Kentucky, due principally to the extensive terminals in Chicago, New Orleans and Memphis, was proved by evidence uncontradicted. Defendants did not introduce a scintilla of evidence. While, therefore, if the instant question were one of mere valuation of property in Kentucky this court would be concluded by the defendant's valuation, this court could not be concluded by any valuation by defendants of property out side the State. If so, the defendants could manipulate values at pleasure so as to tax property in other States by including it in a unit covering many States and apportionable to Kentucky; see 209 Fed. 422, et seq.; Fargo v. Hart, 193 U. S. 499, 500:

"But it is recognized in the cases that if, for instance, a railroad company had terminals in one State equal in value to all the rest of
the line through another State, the latter State could not make
264 use of the unit of the road to equalize the value of every mile. That would be taxing property outside the State under a pretence." 193 U. S., 499, 500.

Defendants would have no more right to tax property in another State "under a pretence" by concealing the value in the unit apportioned than to deprive the corporation of its right to equalization by failing to disclose that it had taxed its property a 100%. The right to equalization and to immunity from taxation of property outside the State are both constitutional rights and their protection requires the court to know the facts and, therefore, the court is the judge of the evidence. K. C. So. R. Co. v. Albers, etc., Co., supra.

This is said responsive to the court's recital that the Board must have made due allowance for the excess value in question; but we have just seen that the Board declares that it made none, because it thought there was none. The Board's reason for so thinking was that the Kentucky earnings appeared to be the same, mile for mile, as the system earnings, but this phenomenon was explained by Mr. Blauvelt (Stenog. Bill Ev., pp. 19, 20), showing that the Kentucky earnings were composed of the earnings intrastate and a mileage proportion of the earnings interstate. Of course, then the earnings per mile might happen to be virtually the same in Kentucky and on the entire system.

Not only did the defendants avow that they had not considered any excess value outside the State, but they showed conclusively that the
$280,000,000 valuation was not reached by reducing to
265 such sum either the $317,525,260 stocks and bonds valuation, or $330,155,500, net earnings valuation, for, they declared (Aff. and Ev., p. 11):

"It is now adjudged and determined by the Board * * * that the *fair cash value of the total capital stock of the Illinois Central Railroad Company, used in its business in Kentucky and elsewhere* during the year ending June 30, 1912, was $280,000,000. That the value of its proportion of the capital stock in Kentucky on the mileage basis, 12.3%, for that period, was $34,400,000." (Italics ours.)

This valuation was "the fair cash value of the total" in Kentucky "and elsewhere." It was not, therefore, the total less the excess outside the State; i. e., "elsewhere." The defendants not only disavowed allowing an excess outside the State, but explained (pp. 11, 12) their reduction of valuation from $34,400,000 to $23,679,180, saying that it was done "out of abundant caution and to the end that no injustice may be done." To that end they say that,

"In arriving at the value of the corporate franchise of the respondent in this State the Board has considered less than 80% of that which it believes to be the fair cash value of Kentucky's proportion"

of the capital stock,

"and has made an additional or arbitrary deduction from the amount thus found *on account of the decrease in earnings of respondent for year ending June* 30, 1912." Italics ours.)

Thus defendants do not fix, but reduce the $34,400,000.00.
266 The reduction from $34,400,000 to $23,679,180 having been made as, or partly as, an allowance for the heavy falling off in the earnings for the year ending June 30, 1912 (the net being only $7,812,718.60 against an average of $18,093,300 for the three next preceding years), the court has deprived us of the allowance actually made by the defendants for the decrease in earnings when the court adopts $34,400,000 for equalization at 60% instead of adopting $23,179,180 for such equalization. We are sure that this was due to the oversight of these considerations, in the magnitude of these records.

II.

Deduction of Investments Outside Railroad Operation.

Likewise, we are confident that there is a misapprehension of the situation with reference to our claim for deduction of our investments in the company's treasury. The valuation for distribution among the States is the value of the plant that is operated as a unit. One State has no right to tax real or personal estate in another State. The situs of such estate is either where situated, or where employed in business, or at the domicile of the owner. Fargo v. Hart, supra; Coulter v. Weir, supra; New Orleans v. Stempel, 175 U. S. 309; Commonwealth v. Avery, 163 Ky., etc.

This court permitted Kentucky to tax the investments in our treasury in Chicago, saying:

"Here there is no evidence whatever that the property in question was not used in and to facilitate plaintiff's business. Every-
267 things tends to show that it was so used. The cash included the cash on which it did its regular business."

The conclusion was, therefore, that the securities and money were "a part of plaintiff's interstate unit," and apportionable. We contend:

First, the burden was not on complainant to prove that securities in its treasury in Chicago were not a part of a railroad plant. The burden was upon the Commonwealth seeking to tax them elsewhere.

Secondly, we submit that the evidence is conclusive that the investments in the treasury were not a part of the railroad plant. A mere inspection of the list almost demonstrates it. (Aff. and other Ev., pp. 77, et seq.)

It is fully proved, however, by M. P. Blauvelt's affidavit, treated as a deposition by stipulation (pp. 86, et seq).

When, at the oral hearing, this court raised the question of use in business of the list of securities and money claimed by complainant to be exempt, complainant caused this affidavit of Mr. Blauvelt to be prepared so as to eliminate every item which could possibly be treated as applicable to railroad operation. Accordingly, Exhibit "A" (page 81) shows such stocks as Realty Company, Steel Company, Telephone Company, etc. Then, it shows bonds and loans and the like, aggregating $43,000,000, June 30, 1911 (page 83); and $46,836,865.89, June 30, 1912 (page 88). The eliminated items, to-wit; those which might, peradventure, concern railroad operation, appear page 84, Exhibit "B" and aggregate $7,466,-
764.83, June 30, 1911; and $6,187,728.81, page 89, Exhibit
268 "E," June 30, 1912, leaving net balance June 30, 1911, of securities not applicable to operation $34,092,235.98, and $40,649,137.08, securities not applicable to operation June 30, 1912.

These figures are less, as remarked by the court, than those claimed by complainant before the Board, but they were reached agreeably to the court's oral intimation at the hearing.

This affidavit, treated by stipulation as a deposition, seems to us conclusive and the case to be clearly within Fargo v. Hart.

Jackson Realty Co. Ltd. stock, Com. Trust Co. stock, and the like constitute no part of a railroad plant. The assessment as a unit of a railroad traversing divers States was not adopted to enable one State to assess property in another, but as the most feasible means of ascertaining what part of the railroad actually operated properly belonged to each particular State. It was necessary to adopt some basis of computing the value in a State and the method adopted was regarded as the best approximation. Of course, the apportionment was necessarily limited to that which could not be eliminated from the apportionment and located at any definite place. Hence, investments of surplus held in the company's treasury, and easily located at its home office, must be assessed there because there is no necessity for distributing them among the States in order to arrive at the State's proportion of the operated unit of railroad: Fargo v. Hart, 193 U. S. 499, 500.

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III.

Assessment by Greater Mileage.

If, however, this court adhere to its present opinion on the instant point it would then result from the decision of this court in the Louisville & Nashville case that the apportionment of the total capital stock valuation of the company must be upon the total mileage owned, operated, leased or controlled by complainant, for the mileage of the Central of Georgia Railway Co., Yazoo & Mississippi Valley Railroad Co., and Indianapolis Southern Railroad Co., are "controlled" if not "owned" by complainant. When, therefore, the ownership of such stocks is held to be for railroad purposes, the mileage of the systems covered by such stocks must be computed in the apportionment. Complainant had treated such stocks and securities as mere investments of surplus earnings when making the reports made to the Board, but the adjudication that they are not to be so treated, but to be considered as used in complainant's business as a part of its unit apportionable among the States, makes the total mileage including that covered by the stocks and securities just mentioned the divisor to be employed in computing the mileage proportion of each State.

Inasmuch as the total mileage covered by complainant's system, including the mileage covered by the stocks of the Y. & M. V. R. R. Co., the Cent. of Ga. R'y Co., and the Indianapolis Southern R. R. Co., does not appear in the record because complainant had treated such securities as investments for its treasury, complainant
270 now, in order to accept the result including the greater mileage, tenders with this petition the affidavits of L. A. Harkness, Assistant to the Comptroller of complainant, showing that the result of including in the total valuation of plaintiff's capital stock the securities in its treasury and apportioning such total capital valuation upon the mileage of complainant including that covered by the securities of the three subsidiary companies just mentioned would be to show a franchise valuation for Kentucky less than that

above indicated as the proper result to be reached upon any proper adjudication of the total value of plaintiff's capital stock.

From said affidavits a proper total stock valuation appears to be $366,675,094; the mileage covered by the securities 7,860.27; the average value per mile of the entire system and calculated on the average stock and bond plan $46,649; the average value per mile in Kentucky $33,144, the total stock valuation for Kentucky on the stock and bond plan $18,518,458; the net income of the entire mileage as if operated as one company for the year ended June 30, 1912, $13,636,366.13, system mileage 8,049.39, Kentucky mileage 561.02, 6.97% of the total. From the affidavits it also appears that complainant's control of the railroads aforesaid is shown by Poor's Manual, pp. 404, 685, 809 and 821.

Consequently by an assessment whether upon the stock and bonds plan or the earnings plan, the two plans recognized by the defendants, the valuation based upon a computation of the extended mileage would not equal that computed upon the lesser mileage
271 as hereinbefore recognized to be admissible and upon the basis of $280,000,000 total stock valuation distributed subject to excess allowance outside the State and equalization at 60%.

Conclusion.

Wherefore we respectfully submit that inasmuch as it appears that complainant's capital stock valuation would be less if the extended mileage were included, complainant is entitled to a rehearing or modification of the court's findings with reference to its assessment, because whether the securities in the treasury be eliminated from consideration or the extended mileage covered by them be considered, the result would be a great reduction of the amount found by the court.

As, however, an assessment based upon $23,679,180.00 equalized according to the ratio ascertained by the court would yield an assessment less than that upon which complainant has already paid taxes, it appears unnecessary to determine the questions now raised as to the elimination of the securities in the treasury of complainant or the consideration of the extended mileage; and we respectfully ask that the court deny any assessment whatever, as taxes upon $6,000,000.00 have already been paid, and no assessment in excess $1,728,605.00 was admissible.

BLEWETT LEE,
TRABUE, DOOLAN & COX,
Counsel for Petitioner.

272 On the same day, on December 1, 1915, the following affidavit of L. A. Harkness was filed herein, to-wit:

STATE OF ILLINOIS,
County of Cook, ss:

Personally appeared before me, a Notary Public in and for said State and County, L. A. Harkness, to me personally known to be

the Assistant to the Comptroller of the Illinois Central Railroad Company, who, being duly sworn, deposes and says:

That he resides at 6552 Kimbark Avenue, Chicago, Illinois; that he is the Assistant to the Comptroller of the Illinois Central Railroad Company; that by virtue of his office and authority he is familiar with the securities of the Illinois Central Railroad Company and its subsidiary lines; that he has informed himself as to the reproduction cost of the various portions of the said system operated by the Illinois Central Railroad Company, as shown by the records in the office of the Valuation Engineer of the said Company and as to the value of the stocks, bonds and other securities of the Illinois Central Railroad Company and its subsidiary lines; that the value as of June 30, 1912 of the capital stock and funded debt of the lines operated, owned, leased or controlled by the Illinois Central Railroad Company, excluding amounts held in the companies' treasuries and duplicated securities and including amounts in the hands of the public, as shown by the average market quotations during the year ending June 30, 1912, as set forth in exhibit on that subject attached to this affidavit, was the total sum Three Hundred Sixty-six Million, Six Hundred Seventy-five Thousand, Naught Ninety-four Dollars ($366,675,094.00); that by dividing this sum
273 by the total mileage of the lines operated, owned, leased or controlled by the Illinois Central Railroad Company as of June 30, 1912 excluding mileage representing only running rights over the lines of other railroads not owned, leased or controlled by the Illinois Central Railroad Company, and not represented by stocks or bonds of the Illinois Central Railroad Company or its subsidiary or controlled companies, either in the hands of the public or otherwise, the toatl system mileage so determined being Seven Thousand Eight Hundred Sixty and Twenty-seven Hundredths (7,860.27) miles, he has determined the average stock and bond value of a mile of the lines operated, owned, leased or controlled by the Illinois Central Railroad Company, computed upon the basis of the stock and bond value of the entire system as aforesaid, to be Forty-six Thousand, Six Hundred Forty-nine ($46,649.00) dollars. Affiant further says that he has determined the stock and bond value of the lines operated, owned, leased or controlled by the Illinois Central Railroad Company in the State of Kentucky in the following manner: Whenever the expenditures of the sums derived from stocks and bonds is shown by the records of the Company to have been expended in the State of Kentucky, the stocks or bonds so represented have been allotted to the State of Kentucky, and whenever the stocks or bonds represent expenditures both within and without the State of Kentucky and cannot be, from the records of the Company, specifically allotted as having been expended within the State of Kentucky, affiant has allotted to the State of Kentucky such proportion of the total amount of stock or bonds upon the property representing same as the reproduction cost of the said property in the State of Kentucky bears to the reproduction cost of the entire property represented by said stock or

bonds, the valuation of stocks or bonds used being the aver-
274 age market quotations as shown in the exhibit attached to this affidavit; that in so far as the stock or bonds do not specifically represent actual expenditures in the State of Kentucky affiant believes that the method adopted is a fair and reasonable one of allotting to the State of Kentucky its proper proportion of the values represented by the stock and bonds in the hands of the public of the Illinois Central Railroad Company and of its subsidiary lines, owned, leased or controlled by the Illinois Central Railroad Company; that as a net result of these calculations, affiant finds the total value upon the stock and bond basis of the lines of railroad operated, owned, leased or controlled by the Illinois Central Railroad Company in the State of Kentucky to be Eighteen Million, Five Hundred Eighteen Thousand, Four Hundred Fifty-eight ($18,518,458.00), and the average value computed upon a stock and bond basis of a mile of railroad of the lines operated, owned, leased or controlled by the Illinois Central Railroad Company in the State of Kentucky is Thirty-three Thousand, One Hundred Forty-four ($33,144.00) Dollars; that affiant has attached hereto an exhibit, being a statement showing the value as of June 30, 1912 of the capital stock funded debt of the lines operated, owned, leased or controlled by the Illinois Central Railroad Company, excluding amounts held in companies' treasuries and duplicated securities and including amounts in the hands of the public, based on average market quotations during the year ended June 30, 1912, reported by the Commercial and Financial Chronicle, and in the absence of such quotations upon the best information obtainable in the State of Kentucky, as representing actual investments in Kentucky, or the proportionate share of Kentucky, upon the basis of the reproduction cost of the lines represented by securities covering property in the State of Kentucky.

Affiant also says that he has caused to be prepared a state-
275 ment showing the consolidated income account for the year ended June 30, 1912 of the lines operated, owned, leased or controlled by the Illinois Central Railroad Company, showing amounts available for interest, dividends, additions and betterments, and other corporate purposes; dividends, interest and other corporate payments between the several companies comprising the Illinois Central System having been eliminated from the income accounts of the respective companies so as to show the income of the entire system as if it were operated as one company, and that, as shown by the records and accounts of the said lines, the net income available for interest, dividends, additions and betterments, and other corporate purposes, for the year ended June 30, 1912, was Thirteen Million, Six Hundred Thirty-six Thousand, Three Hundred Sixty-six Dollars & Thirteen Cents $13,636,366.13; that the total mileage operated for the said year on the said system, including all the lines operated, owned, leased and controlled by the Illinois Central Railroad Company was Eight Thousand, Naught Forty-nine and Thirty-nine Hundredths (8,049.39) miles; and that the mileage thereof in the State of Kentucky was Five Hundred Sixty-one and Two

Hundredths (561.02) miles amounting to Six and Ninety-seven Hundredths (6.97%) per cent of the said total mileage for the said system.

Affiant further says that each and every one of the said three exhibits so attached to this affidavit have been prepared under his direction by members of the Accounting Department of the Illinois Central Railroad Company from the books of account of the said company and its subsidiary lines, and have been examined by him, and that he believes them to be true, correct and accurate statements of the matter therein contained.

Affiant further says that on June 30, 1911, the Illinois Central Railroad Company was the owner of all of the capital stock,
276 except directors' shares, of the Central of Georgia Railway Company that the Illinois Central Railroad Company was the owner of all the capital stock, except directors' shares, of the Mississippi Valley Company, a corporation, which was the owner at the same time together with the Illinois Central Railroad Company of substantially all of the capital stock, except directors' shares, of The Yazoo & Mississippi Valley Railroad Company, so that the railroads of ——,

The Yazoo & Mississippi Valley and Central of Georgia Railroad Companies, respectively, were owned or controlled by the Illinois Central Railroad Company within the meaning of the laws of Kentucky relating to revenue and taxation, as will more fully appear from the standard authority, Poor's Manual of Railroads for the year 1912, at pages 425, 855, and 725, except that the words "Mississippi Valley Corporation" at page- 725 & 855 should read "Mississippi Valley Company."

L. A. HARKNESS.

Sworn to and subscribed before me in Chicago, Cook County, Illinois, this 15th day of November, A. D. 1915.

I hereby certify under my official seal that I am authorized under the laws of the State of Illinois to administer oaths.

M. J. CONNELL,
Notary Public, Cook County, Illinois.

My Commission expires December 21, 1915.

277 On the same day, to-wit, December 1, 1915 the following Exhibit attached to the affidavit of L. A. Harkness was filed herein, to-wit:

(Here follows Tabular Statement, marked page 278.)

279 On the same day, to wit, on December 1, 1915, the following Exhibit attached to the affidavit of L. A. Harkness was filed herein, to-wit:

Statement Showing Value, as of June 30, 1912, of the Capital Stock and Funded Debt of the Lines Operated, Owned, Leased or Controlled by the Illinois Central Railroad Company, Excluding Amounts Held in Companies' Treasuries and Duplicated Securities, and Including Amounts in the Hands of the Public, Based on the Average Market Quotations During the Year Ended June 30, 1912, Reported by the Commercial and Financial Chronicle, and in the Absence of Such Quotations Upon the Best Information Obtainable, in the State of Kentucky as Representing Actual Investments in Kentucky or Proportionate Share of Kentucky Upon the Basis of the Reproduction Cost of the Lines Represented by Securities Covering Property in the State of Kentucky.

	Amount outstanding.		Assignable to Kentucky.			
Chicago, St. Louis & New Orleans R. R. Co.:	Par value.	Av. market quot.	Main line.	Cairo Bridge.	Louisv. Div.	Total.
Capital Stock	$9,989,800	$9,155,652				
5% Bonds of 1951	11,289,000	12,925,905	$2,051,129	$.....	$.....	$2,051,129
3½% Bonds of 1951	1,359,000	1,147,540				
Illinois Central R. R. Co.: Louisv. Div. & Terminal 3½% Bonds	21,788,000	18,728,965	.....	.....	14,382,554	14,382,554
Illinois Central R. R. Co.: Cairo Bridge 4% Bonds	3,000,000	2,850,000	.....	2,084,775	.....	2,084,775
Total	$47,425,800	$44,808,062	$2,051,129	$2,084,775	$14,382,554	$18,518,458

Miles of Road in Kentucky	558.72
Amount per mile of road	$33,144
Miles of Road—System	7,860.27
Percentage of Mileage in Kentucky	7.11

280 On the same day, to-wit, on December 1, 1915, the following Exhibit attached to the affidavit of L. A. Harkness was filed herein, to-wit:

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281 ***Consolidated Income Account for the Year Ended June 30, 1912, of the Lines Operated, Owned, Leased or Controlled by the Illinois Central Railroad Company, Showing Amount Available for Interest, Dividends, Additions, and Betterments, and Other Corporate Purposes. (Dividends, Interest, and Other Corporate Payments Between the Several Companies Comprising the Illinois Central System Have Been Eliminated from the Income Accounts of the Respective Companies, so as to Show the Income of the Entire System as if it were Operated as One Company.)***

	Illinois Central R. R. Co.	Yazoo & Mississippi Valley R. R. Co.	Central of Georgia Ry. Co.	Total.
Railway Operating Income	$7,812,718.60	$1,276,005.98	$3,451,977.27	$12,540,701.85
Other Income:				
Income from lease of road	.....	.....	43,500.00	43,500.00
Joint facility rent income	1,105,683.24	15,376.02	50,207.96	1,171,267.22
Miscellaneous rent income	94.18	18,640.79	7,584.09	26,319.06
Other properties-net income	.....	22,512.40	.....	22,512.40
Dividend income	120,000.00	.....	422,989.50	542,989.50
Income from funded securities	88,225.43	.....	80,950.00	169,175.43
Income from unfunded securities and accounts	503,173.33	1,725.35	.....	504,898.68
Miscellaneous income	221,629.65	5,538.83	101,216.06	328,384.54
Total Other Income	2,038,805.83	63,793.39	706,447.61	2,809,046.83
Gross Income	9,851,524.43	1,339,799.37	4,158,424.88	15,349,748.68
Deductions from Gross Income:				
Deductions for lease of other roads	12,039.70	12,832.80	368,474.68	393,347.18
Hire of equipment-debit balance	154,893.65	366,037.27	53,721.68	574,652.60
Joint facility rent deductions	561,066.57	97.29	65,556.30	626,720.16
Miscellaneous rent deductions	8,761.83	749.17	72,715.44	82,226.44
Miscellaneous deductions	3,955.80	.....	32,480.37	36,436.17
Total Deductions	740,717.55	379,716.53	592,948.47	1,713,382.55
Net income available for interest, dividends, additions and betterments, and other corporate purposes	9,110,806.88	960,082.84	3,565,476.41	13,636,366.13
Mileage Operated-System	8,049.39 miles			
Mileage Operated-Kentucky	561.02 "			

Kentucky's proportion—6.97 per cent.

282 On the same day to-wit, on December 1, 1915, the following affidavit of Patrick S. Hanagan was filed herein, to-wit:

STATE OF ILLINOIS,
County of Cook, ss:

Personally appeared before me, a Notary Public in and for said State and County, Patrick S. Hannagan, to me personally known to be the Statistician of the Illinois Central Railroad Company, who, after being duly sworn, deposes and says:

That he resides at 1307 East 72nd Place, Chicago, Illinois; that he is the Statistician of the Illinois Central Railroad Company; that in the case of the Illinois Central Railroad Company vs. McChord et al., Railroad Commission of Kentucky, No. 543, United States Circuit Court, Sixth Circuit, Eastern District, it became and was his duty to prepare from the official records of the Company accurate statistics showing what proportion of the receipts of the Illinois Central Railroad Company in the State of Kentucky was derived from Intrastate traffic and what proportion was derived from interstate traffic, intrastate traffic embracing the traffic moving from a point within the State of Kentucky to a point within the State of Kentucky, and interstate traffic embracing traffic moving from a point within the State of Kentucky to a point outside the State of Kentucky, or, from a point outside the State of Kentucky to a point within the State of Kentucky, or, passing from a point outside the State of Kentucky through the State of Kentucky to another point outside the State of Kentucky; that in the preparation of the said statistics in the case of the intrastate traffic the entire receipts were allotted to the State of Kentucky and that in the case of interstate traffic, as above defined, the basis of allotment to the State of Kentucky was the mileage *with* the respective shipments moved in the State of Kentucky, as compared with the total mileage moved; that as a result of the investigation at that time made for the purposes of the said suit, the relative proportions of intrastate receipts and interstate receipts were as follows:

283 Fiscal year ending June 30, 1905:

Intrastate	23.04%
Interstate	76.96%

Fiscal year ending June 30, 1906:

Intrastate	24.24%
Interstate	75.76%

Eight months ending February 28, 1907:

Intrastate	24.88%
Interstate	75.12%

Average for the 2 years and 8 months:

Intrastate	23.95%
Interstate	76.05%

that he is familiar with the returns made to the Board of Valuation and Assessment of the State of Kentucky for the fiscal years ending June 30, 1911, 1912 and 1913; that in the statistics so furnished to the said Board the interstate receipts were computed with the same basis of mileage proportion as hereinabove set forth, and that the proportion of interstate receipts during thses years was, in the opinion of affiant, substantially the same as during the years 1905, 1906, and 1907.

PATRICK S. HANNAGAN.

Sworn to and subscribed before me in Chicago, Cook County, Illinois, this 13th day of September, A. D. 1915, and I hereby certify under my official seal that I am authorized under the laws of the State of Illinois to administer oaths.

M. J. O'CONNELL,
Notary Public, Cook County, Illinois.

My Commission expires December 31, 1915.

284 On the same day, to-wit, on December 1, 1915 another affidavit of L. A. Harkness was filed herein, which is as follows, to-wit:

STATE OF ILLINOIS,
County of Cook, ss::

Personally appeared before me, a Notary Public in and for said State and County, L. A. Harkness to me personally known to be the Assistant to the Comptroller of the Illinois Central Railroad Company, who, being duly sworn, deposes and says:

That he resides at 6552 Kimbark Avenue, Chicago, Illinois; that he is the Assistant to the Comptroller of the Illinois Central Railroad Company; that by virtue of his office and authority he is familiar with the mileage operated June 30, 1912, of the lines operated, owned, leased or controlled by the Illinois Central Railroad Company, including trackage rights for the purposes of operation over the lines of other railroad companies; and that on June 30, 1912 the mileage so operated, owned, leased or controlled was as follows:

	Whole line.	Kentucky.
Illinois Central Railroad Company.....	4762.70	561.02
The Yazoo — Mississippi Valley Railroad Co.	1371.98	.....
Central of Georgia Railway Company....	1914.71	.....
	8049.39	561.02

and that the proportion of mileage in Kentucky to the whole system was 6.97 per cent.

Affiant further says that the mileage of the Illinois Central System operated June 30, 1912, of the lines operated owned, leased or controlled by the Illinois Central Railroad Company, excluding trackage rights over the lines of other companies, was as follows:

	Whole line.	Kentucky.
Illinois Central Railroad Company.....	4578.48	558.72
The Yazoo & Mississippi Valley Railroad Co.	1371.40	.....
Central of Georgia Railway Company....	1910.39	.....
	7860.27	558.72

285 and that the proportion of mileage in Kentucky to that of the whole system, excluding trackage rights, was 7.11 per cent.

L. A. HARKNESS.

Sworn to and subscribed before me in Chicago, Cook County, Illinois, this 24th day of November, A. D. 1915.

I hereby certify under my official seal that I am authorized under the laws of the State of Illinois to administer oaths.

P. S. HANNAGAN,
Notary Public, Cook County, Illinois.

My Commission expires March 14, 1919.

286 On December 31, 1915, the following order was made and entered herein, to-wit:

#769.

287 ILLINOIS CENTRAL RAILROAD COMPANY, Plaintiff,
vs.
H. M. BOSWORTH et al., Defendants.

Dec. 31/15.

This day came the plaintiff, by counsel, and tendered and offered to file a supplemental bill herein, and the Court being advised, it is ordered that the said bill be and it is filed;

Thereupon came the defendants, named in said supplemental bill, Robert L. Greene, Sherman Goodpaster, James P. Lewis, said Greene, Goodpaster and Lewis composing the Board of Valuation and Assessment of the State of Kentucky, Mills M. Logan, Charles H. Morris, O. S. Hogan, D. O. Myatt and Victor A. Bradley, by Mills M. Logan, Assistant Attorney General, and solicitor for himself and said other defendants, and entered their appearance herein; and, it is now by consent of all parties hereto ordered adjudged and decreed that the said defendant Robert L. Greene immediately upon his accession to the office of Auditor of Public Accounts for the Commonwealth of Kentucky, shall be substituted to the place and stead of his predecessor in office, the defendant Henry M. Bosworth; that the defendant Sherman Goodpaster, immediately upon his accession to the office of Treasurer of said Commonwealth shall be substituted to the place and stead of his predecessor in said office, the defendant Thomas S. Rhea; that the defendant, James P. Lewis, immediately upon his accession to the office of Secretary of State of said Commonwealth shall be substituted to the place and stead of his predecessor

in said office, the defendant Carl F. Crecelius; and that said defendants, Greene, Rhea and Crecelius shall then be substituted for their several predecessors aforesaid as members composing the Board of Valuation and Assessment of the Commonwealth of Kentucky; that
288 the defendant, Mills M. Logan, immediately upon his accession to the office of Attorney General of said Commonwealth, shall be substituted in the place and stead of his predecessor in said office, the defendant, James Garnett; and that the said Morris, Hogan and Myatt respectively be substituted to the place and stead of their predecessors respectively, Morris, Logan and Hoagn, and that said Victor A. Bradley be substituted to the place and stead of his predecessor; that all the allegations made by the plaintiff in this suit in its bill, and the amendments thereto, with respect to the defendants Bosworth, Rhea and Crecelius, and with respect to them as members of the Board of Valuation and Assessment of the State of Kentucky, and all the allegations made as aforesaid with respect to said Garnett and his assistants, and with respect to said Bradley, shall in so far as they may be applicable be construed and treated — specifically made with respect to the defendants, Greene, Goodpaster and Lewis, and as to them as members of the Board of Valuation and Assessment aforesaid, and with respect to said Logan and His Assistants and said Bradley; that all answers made by the defendants Bosworth, Rhea and Crecelius, and by them as members of the Board of Valuation and Assessment and by said Garnett and the other defendants herein shall be construed and treated as made by the defendants Greene, Goodpaster and Lewis, and by them as members of the Board of Valuation and Assessment aforesaid, and by said Logan and the other defendants aforesaid to said supplemental bill; that all the evidence introduced in this suit during its pendency, as well *as* that introduced by the defendants as that introduced by the plaintiff shall be treated and considered as introduced for and against respectively the defendants Greene, Goodpaster, Lewis and the other defendants to said supplemental bill; that all orders heretofore entered in this suit shall be extended to and considered and held to embrace and apply to the said defendants Greene, Goodpaster and
289 Lewis and the other defendants to said supplemental bill and to their assistants and agents, now and after their induction into their respective offices, with the same force and effect as applied to their predecessors respectively during their incumbency of their offices, and with the same effect as if said orders were re-entered substituting the names of the defendants to the supplemental bill for the names of their predecessors respectively, and that this suit shall immediately upon their induction into office proceed against the said defendants to the said supplemental bill, the said Greene as Auditor aforesaid, the said Goodpaster as Treasurer aforesaid, the said Lewis as Secretary of State aforesaid, and said Greene, Goodpaster and Lewis as constituting the said Board of Valuation and Assessment, and said Logan as Attorney General aforesaid and his assistants, and said Bradley as Commonwealth's Attorney aforesaid as fully as against their respective predecessors in office; and this order, being entered by consent, is entered without the notice or bond, prescribed by the Act of Congress of October, 1914.

290 Said Supplemental Bill referred to in and filed by the foregoing order of December 31, 1915 is as follows, to-wit:

In the District Court of the United States for the Eastern District of Kentucky.

#769.

ILLINOIS CENTRAL RAILROAD COMPANY, Plaintiff,
vs.
HENRY M. BOSWORTH et al., Defendants.

Supplemental Bill in Equity Bringing into This Suit the Following Additional Persons as Defendants.

Robert L. Greene, who has been elected Auditor of Public Accounts of the State of Kentucky;

Sherman Goodpaster, who has been elected Treasurer of the State of Kentucky;

James P. Lewis, who has been elected Secretary of State of the State of Kentucky:

Mills M. Logan, who has been elected Attorney-General of the State of Kentucky;

—— ——, who is to be appointed Assistant Auditor of Public Accounts of the State of Kentucky;

Charles H. Morris, who is to be appointed First Assistant Attorney General of the State of Kentucky;

O. S. Hogan, who is to be appointed Second Assistant Attorney General of the State of Kentucky;

D. O. Myatt, who is to be appointed Third Assistant Attorney General of the State of Kentucky;

Victor A. Bradley, who has been re-elected Commonwealth's Attorney for the Franklin Circuit Court.

The Illinois Central Railroad Company, by way of Supplemental Bill, insisting upon all the allegations in its bill of complaint herein, and its amended bills herein now supplements the said bill as amended and further says:

That Robert L. Greene, Sherman Goodpaster and James P. Lewis were at the time of the filing of the bill of complaint herein, and now are, citizens of the State of Kentucky and residents and inhabitants in the Eastern District thereof; that Mills M. Logan, Charles H. Morris, O. S. Hogan, D. O. Myatt and Victor A. Bradley were at the time of the filing of the bill of complaint herein, and now are, citizens of the State of Kentucky and residents and inhabitants of the Eastern District thereof;

And that —— ——, who is to be appointed Assistant Auditor of Public Accounts of the State of Kentucky, was at the time of the filinf of the bill of complaint herein, and is now, a citizen of the State of Kentucky and a resident and inhabitant of the — District thereof; that the respective terms of office of Henry M. Bos-
291 worth, Thomas S. Rhea and Carl F. Crecelius as Auditor, Treasurer and Secretary of State and as constituting the

Board of Valuation and Assessment of the State of Kentucky, as alleged in the original bill of complaint herein, and the terms of office of G. B. Likens, Assistant Auditor, James Garnett, Attorney General, Charles H. Morris, First Assistant Attorney General, Mills M. Logan, Second Assistant Attorney General, O. S. Hogan, Third Assistant Attorney General and Victor A. Bradley, Commonwealth's Attorney for the Franklin Circuit Court, will expire on the third day of January, A. D. 1916 when their successors respectively will succeed them in said offices;

That at the general Election held in the State of Kentucky on the 2nd day of November, A. D. 1915, the defendant Greene aforesaid was elected Auditor of Public Accounts of the State of Kentucky; the defendant Goodpaster was elected Treasurer of the State of Kentucky; the defendant Lewis aforesaid was elected Secretary of State of the State of Kentucky; the defendant Logan aforesaid was elected Attorney General of the State of Kentucky; and the defendant Bradley aforesaid was re-elected Commonwealth's Attorney for the Franklin Circuit Court; and that the terms of all these officers will begin on the third day of January, A. D. 1916 and that when inducted into office the said Greene, Goodpaster and Lewis will compose the State Board of Valuation and Assessment of the State of Kentucky; that the said Mills M. Logan will appoint as his First Assistant the said Charles H. Morris, as his Second Assistant the said O. S. Hogan, and as his Third Assistant the said D. O. Myatt, and that said Greene will appoint —— —— as Assistant Auditor of Public Accounts for the State of Kentucky.

That the said several persons above mentioned who have been elected and those who have been appointed and those who
292 will be appointed, as aforesaid, as suc-essors respectively to the defendants named in the bill of complaint herein and as stated in this supplemental Bill will under color of their official powers respectively, and each of them will, do and perform the several acts and things which the bill of complaint herein alleged were about to be done and performed by their predecessors in the office respectively; and that it is, therefore necessary that the same orders and temporary and final injunctions be entered as against the new defendants, made defendants by this Supplemental Bill as were made or prayed to be made against the defendants to said original bill.

That the aforesaid Mills M. Logan, Charles H. Morris, O. S. Hogan and Victor A. Bradley are the same persons made defendants to the original bill of complaint herein, and that said Greene, Goodpaster, Lewis, Logan and Bradley elected to the respective offices above alleged have received their certificates of election and are ready and entitled to qualify as incumbents of said respective offices immediately upon the expiration of the terms of offices of their predecessors respectively on the 3rd day of January, A. D. 1916.

Wherefore plaintiff prays that the said several persons above enumerated in the caption be now made parties defendant hereto, and that they be substituted in this suit for their predecessors—upon

the succession of the offices aforesaid; that this cause proceed in continuity against the new defendants aforesaid and such of the old defendants as will continue in office; that a temporary injunction be issued against each of the new defendants aforesaid to the same purport and effect as the injunction issued herein, and that meanwhile a temporary restraining order issue and remain in force pending the hearing and determination of the motion for a temporary injunction; that the plaintiff have all the relief against the new defendants made such by this supplemental bill as was prayed against the defendants to the original bill herein; that plain-
293 tiff have process against the said new defendants in the same manner as the process was awarded against the original defendants requiring the said new defendants to answer herein, but not under oath; and generally that this cause proceed with the same force and effect against the new defendants as if they had been properly joined as defendants in the original bill of complaint herein; and plaintiff prays for all further and general relief and for its costs herein, incurred.

BLEWETT LEE,
TRABUE, DOOLAN & COX,
Attorneys for Plaintiff.

294 On March 4, 1916 an order of court was made and entered herein as follows, to-wit:

ILLINOIS CENTRAL RAILROAD COMPANY
vs.
H. M. BOSWORTH et al.

The Court having duly considered plaintiff's petition for rehearing herein and being sufficiently advised, files its opinion overruling same to which the plaintiff excepts.

Said Opinion of Court is as follows, to-wit:

295 United States District Court, Eastern District of Kentucky.

No. 769.

ILLINOIS CENTRAL RAILROAD COMPANY, Plaintiff,
vs.
HENRY M. BOSWORTH et al., Defendants.

This cause is before me on petition for rehearing. It is urged that I erred in not holding that the assessment complained of was void as to all of it except $1,728,606, and, as the plaintiff has already paid on an assessment of $6,000,000, in not directing an absolute decree for it against the collection of any more taxes from it on this assessment. The way in which this is made out is this. The Board valued the portion of plaintiff's unit in this state at $23,679,180. It is claimed that 60% of this should have been taken, which is

$14,207,508, and deducting the tangible valuation, to wit $12,478,-903, leaves the balance of $1,728,605 as the franchise assessment. The position is taken that I substituted my judgment for that of the Board when I took $34,400,000 as the fair cash value of the portion of plaintiff's unit in Kentucky instead of the sum of $23,679,-180, and that in the face of the declaration that I had no right to substitute my judgment for that of the Board. I submit that I did no such thing. The Board found the fair cash value of plaintiff's unit to be $280,000,000 and $34,400,000 to be the "value of its proportion of the capital stock in Kentucky on the mileage basis 12.3% It nowhere found $23,679,180 to be the fair cash value of the plaintiff's unit in this state. On the contrary, having reference to its fixing this valuation, it said that it "had considered less than 80% of that which it believed to be the fair cash val[illegible]" * * * to wit $34,400,000," and that this sum was less than 8[illegible] of its fair cash value with an additional or arbitrary deduction on account of decreased earnings for the year 1912. It is really less than
296 70%. The fact that it said that it reduced the valuation of $34,400,000 to $23,679,180 "to be conservative and out of abundant caution, to the end that no injustice may be done in arriving at the value of the corporate franchise of the respondent in this state", and on account of the decrease in earnings for the year ending June 30th., 1912 does not show its express statement that it took the valuation at $23,679,180 to be less than 80% of the fair cash value of the portion of plaintiff's unit in Kentucky to be untrue. That owing to unusual causes there was a substantial decrease in plaintiff's earnings for that year need not have substantially affected the value of such portion. Indeed the Board expressly found that it did not and its deduction, according to it, was arbitrary and pure gratuity. One with penetration should be able to detect in the words as to being conservative out of abundant caution and doing no injustice, construed in the light of the context and all the circumstances, as I have heretofore remarked, a touch of insincerity. The real reason for the reduction, otherwise than on account of decreased earnings, was to meet the claim of plaintiff that it was entitled to be equalized with property generally. There was sensitiveness on the part of the Board that they would violate their oaths if they valued plaintiff's property at less than its fair cash value, an unnecessary sensitiveness as I view it, and instead of saying in so many words that they had made the reduction in order to equalize they preferred to put the matter this way.

But in holding that the Board placed the fair cash value of the whole unit at $280,000,000 and of the portion thereof in Kentucky at $34,400,000 I do not mean that they went at it in the way the statute comtemplates. The statute contemplates that the Board shall be lovers of the truth for the truth's sake. By this I mean that it contemplates that in making the assessment of the franchise in this state of such a corporation as plaintiff that it shall first determine the value of the whole unit and then determine how much of
297 that valuation is in Kentucky without any regard to consequences, i. e. where such findings will land it as to the

value of the corporation's franchise in Kentucky. The Board, when it began to raise the assessments of plaintiff and like corporations so greatly, did not proceed in this way. It began wrong end foremost. It first determined—and apparently this was all it did—how much was the value of the franchise. How it reached such valuation has never been disclosed. It did not enter anything on its records than the value of the franchise. Nor did it disclose to the interested corporations in any other way how it had so done. I held that the statute required that they should make such determinations and enter them on its record and then for the first time was any presentation made on that subject. It is not unreasonable to infer that these determinations were affected to a certain extent at least, by the predetermination of the value of franchise. And when it came to the second year, which is the one involved here, it is likewise not unreasonable to infer that in making the determinations for that year it was affected to a certain extent, at least, by what it had done the previous year. So that there is room to claim that the valuation made for the year here involved was affected or colored by the fact that, at the start, in making the assessment for the first year, the Board predetermined what the value of the franchise was. Similar opinions to these I have heretofore expressed.

But there cannot be the slightest question that the Board fixed the fair cash value of plaintiff's unit for the year involved here at $280,000,000 and of the portion thereof in Kentucky at $34,400,000, though it did so in the way indicated, and that it did not place the fair cash value of the portion of the unit in Kentucky at $23,679,180.

298 It is said that my finding that it did not appear how the Board arrived at $280,000,000 as the fair cash value of the unit clinched $23,679,180 as the maximum to be equalized at 60%. I fail to see how it does so and, not only this, but how this finding has any relevancy whatever to the sum to be equalized. Because it does not appear how the Board arrived at $280,000,000 the fair cash value has no tendency whatever to show that it did not find that sum to be the fair cash value of the unit and $34,400,000 as the fair cash value of the portion thereof in Kentucky, when it says in so many words that it did so find, and the sum to be equalized is the sum which it found to be the fair cash value of the portion of the unit in Kentucky.

Then again it is urged that the finding of $280,000,000 as the fair cash value of the unit and $34,400,000 as the fair cash value of the portion thereof in Kentucky included property outside of Kentucky, in the way of terminals, which was not taxable in Kentucky and, therefore, it must be taken that the reduction to $23,679,180 was to get rid of this outside property, and that I was in error in holding that it is to be taken that due allowance was made therefor, in arriving at $280,000,000 as the fair cash value to be apportioned. It is claimed that this is negatived by two considerations to be noted later. At any rate in the absence of its being so negatived it is to be so taken. In the case of Fargo vs. Hart 193 U. S. 490 Mr. Justice Holmes said that the "real Question" in the case was

whether "it sufficiently appears that the board took into account property which it had no right to take into account". In the absence then of its appearing that the Board did not make due allowance on account of these terminals, i. e. included them in the apportionment it is to be taken that it did make such allowance and did not so include them. But it is not only a matter of presumption; there are circumstances tending to show that it made allowance for them and did not intend, at least, to include them.

In the first place plaintiff claimed before the Board that
299 allowance should be made for them and the Board expressly noted that it considered the claim. Then it found the fair cash value of plaintiff's unit on the stock and bond plan to be $317,525,300 and on the capitalization plan $330,155,500. For some reason in fixing the fair cash value at $280,000,000 it placed it at $37,525,300 less than the valuation on the former plan, and $50,155,500 less than that on the latter. This reduction is to be accounted for in some way. Besides the plaintiff produced affidavits before the Board to show what it would cost to reproduce its physical unit and according to them it would take $363,975,545 and the Board's valuation was $83,975,545 less than this. Of course it is plaintiff's claim that the cost of reproduction is not the value. But I will have to know more about such matters than I do now to understand why the physical plant of a successful concern is not worth the cost of reproduction. Besides plaintiff relies on the cost of reproduction to show the value of its terminals. In the absence of it there was and is no evidence as to the real value of such terminals so as to know just how much reduction should be made on this account. The first of the two considerations relied on as negativing the fact that any allowance was made for terminals is the finding that $280,000,000 was the fair cash value of the plaintiff's total capital stock used in its business in Kentucky and elsewhere. In view of the context this need not mean more than that such was the real value thereof subject to apportionment though it is not so expressed. The other is the finding that the mileage of plaintiff in Kentucky was a- valuable as the average mileage of the system. This finding, however, is not limited to the physical or tangible mileage. It is made in view of the fact that the ratio of gross and net earnings of plaintiff in Kentucky for the year ending

June 30th., 1912, was equal to the ratio of mileage in Ken-
300 tucky. According to this the intangible mileage was taken into consideration in making the finding. It is stated on behalf of plaintiff that the Kentucky earnings were composed of intrastate earnings and a mileage proportion of interstate earnings. If so, as I have heretofore indicated, in the Kentucky earnings we have the only possible true measure for determining the intangible value of the mileage in Kentucky, and Kentucky makes up in intangible mileage what it is behind in tangible. This calls for the application of the case of W. U. Tel. Co. vs. Massachusetts, 125 U. S. 530 to which I have referred in my L. & N. R. R. Co. opinions. This finding therefore, does not negative that a deduction was made on account of the excess physical value out of the state. It is

merely an added consideration for accepting $280,000,000 as the amount for apportionment on the mileage basis.

Then as to the personal property claimed to be outside of the state and not a part of the plaintiff's unit for apportionment. I put it in my former opinion at $46,836,865.89. It really is $40,649,137.08. The plaintiff claimed a deduction of $55,874,755 on this score before the Board and now drops over $15,000,000 therefrom. It made no showing of the real value of this property or gave an itemized list thereof so that the Board might make an examination as to the value thereof. Even if the Board should have made a deduction on account thereof it cannot be said that it did not give sufficient consideration thereto. And in the showing here we have nothing but the itemized list of the affidavit of Mr. Blauvelt that these items were not derived from railroad operations or used for railroad purposes located and having their situs outside of the state. No attempt is made to put the court in position to determine for itself whether it is a part of its unit or any explanation given as to why plaintiff is holding on to this property,
301 how its ownership and possession serves plaintiff, if at all, and why it is not distributed to the stockholders. Nor is any estimate of its value given. We have nothing but its cost or book value. As to this matter the cases of Coulter vs. Weir and Fargo vs. Hart do not apply. In the former case the property in question had been placed in the hands of trustees for benefit of stockholders. In the latter case the facts do not clearly appear as to whether such a separation of the property from the express company had been made. It is likely that it had. All that appeared as to its use to the Company was that it gave it credit, which was the case in Coulter vs. Weir.

It is too late now to go into the question in this case as to whether certain controlled mileage should not be computed in the apportionment. It has never heretofore been claimed that it should, notwithstanding the L. & N. R. R. Co. has always so claimed. Besides whilst this consideration might affect the question as to whether the Board's assessment conformed to the statutory method, as I am not sure that this method is fair to Kentucky, I will not be affected by it in determining the fair cash value of the portion of plaintiff's unit in Kentucky to be equalized with other property. In this particular I will be governed solely by the Board's determination as to what that value is and this, not because I have any particular confidence in its finding as to fair cash value, but because I am shut up to it. I know of no other cash value that can be availed of for the purpose of equalizing.

There are two general considerations not heretofore noted which should be referred to. One is that heretofore in this and in the other case plaintiff has taken the position that it was not liable to any franchise assessment at all. I may be mistaken as to this as I do not have its briefs before me. But such is my recollection. And in this case it now concedes that it is subject to assessment only for the sum of $1,728,605. I have, therefore, had no other help

from plaintiff in reaching a conclusion as to how much it
302 should be assessed on account of its franchise in Kentucky except so far as I was helped towards the conclusion that plaintiff was not bound to pay taxes on any franchise assessment whatever. If I was to conclude that it was assessible to some extent I was unaided by plaintiff in determining the amount of the assessment. I had to find out what it should be by my own digging. Plaintiff has sought to have me hold that it was not bound to pay any franchise taxes, when it has always paid such taxes since the law went into force and for the four or five years preceding the raises complained of before me it paid on assessments of about $4,500,000 and all this without complaint so far as I am aware. Of course, if it was made clear that in so doing it had by mistake acted against its interest I was in duty bound to so hold and I would not have had the slightest hesitancy in so holding. But the chances are almost infinite against its having made any such mistake. Then before me it makes no presentation of the actual value of these terminals outside of the state—nothing but their cost of reproduction—or of the actual value of this personal property which is claimed not to be a part of its unit—only its book or cost value. Besides it makes out here that its capital stock on the capitalization plan is worth nearly $13,000,000 and on the stock and bond plan nearly $25,000,000 more than it made it to be worth before the Board and it makes out the deduction, which it claims should be made on account of outside personal property, to be more than $15,000,000 less. This indicates that its figures cannot be absolutely depended on.

The other consideration is that the assessment of plaintiff cannot be said to be out of line with the other assessments involved before me in similar litigation in being unreasonably higher than any of them, whereas to accept plaintiff's position would make it unreasonably lower. As I leave plaintiff's franchise assessment its whole assessment, tangible and intangible, is at the rate of about
303 $36,450 per mile, which makes the par value about $60,750 per mile. The assessment of the Louisville & Nashville Railroad Company is at the rate of about $35,125, the par value about $58,540 per mile. That of the Chesapeake & Ohio Railway Company is about $34,250 per mile, which makes the par value about $37,000 per mile. And that of the C. N. O. & T. P. Ry. Co. is about $71,650 per mile, which makes the par value about $119,425 per mile. The latter is so much larger than any of the others that it makes one question whether there has not been some mistake. But it is the simplest of all four to handle. There must be something exceptional about it to lead to so much greater assessment and valuation than in the other cases. The Chesapeake & Ohio Ry. Co. is charged only slightly less mileage than plaintiff and about $2,000 per mile less assessment and about $3,500 per mile less valuation. But included in its mileage is 105.7 miles as to which it only has a traffic arrangement, such mileage being part of the mileage of other companies and 39.3 miles of very inferior mileage. Certainly then the plaintiff's assessment is not out of line

with those of the C. N. O. & T. P. Ry. Co. and C. & O. Ry. Co. Possibly there is no reason why its assessment per mile should exceed that of the L. & N. R. R. Co., but I have no data by which this can be determined. According to plaintiff's contention that it should not be assessed for franchise at all its assessment would be about $22,100 per mile and according to its present view that the assessment should not be more than $1,728,605 it would be at the rate of about $25,000 per mile, which makes par value about $42,000 per mile, or about $15,000 per mile lower than the lowest of the others.

In conclusion I will say that there are two things about which I feel reasonably sure in this case. One is that the Board fixed the fair cash value of the portion of plaintiff's unit in Kentucky at $34,400,000 and that I have no such data before me as to enable me to say that this valuation includes any property outside
304 of the state. The other is that property generally in this state is assessed at no greater percentage of its fair cash value than 60% and that plaintiff's property should be assessed at no greater percentage of its fair cash value than this. It is because I so felt that I held as heretofore indicated and I still so feel.

The petition for rehearing is overruled.

March 4, 1916.

A. M. J. COCHRAN, *Judge.*

Filed Mar. 4, 1916. J. W. Menzies, U. S. Clerk.

305 On March 13, 1916, the following order was made and entered herein, to-wit:

#769.

ILLINOIS CENTRAL RAILROAD COMPANY
vs.
H. M. BOSWORTH et al.

This day came the complainant, by solicitors, and tendered and offered to file a second supplemental bill herein, and the court being advised, it is ordered that said bill be, and it is filed.

Then came the defendant named in said supplemental bill, T. M. Jones, by M. M. Logan, Attorney General, and solicitor for defendants, and entered his appearance herein, and it is now, by consent of all parties hereto, ordered, adjudged and decreed that the said defendant, T. M. Jones, be substituted in place of his predecessor in office as Assistant Auditor of Public Accounts for the State of Kentucky, defendant, G. B. Likens, and that all parties brought into this cause by said Second Supplemental Bill and the supplemental bill herein filed December 31, 1915, whether as entirely new parties, or as old parties holding new offices, shall take herein the places exactly of their respective predecessors in office and be respectively affected exactly as they were respectively affected by all pleadings, proof and orders herein, including the preliminary

order of injunction and all other steps taken and proceedings had in this cause.

306 Said Second Supplemental Bill referred — in and filed by the foregoing order of March 13, 1916 is as follows, to-wit:

In the District Court of the United States, Eastern District of Kentucky.

769. In Equity.

ILLINOIS CENTRAL RAILROAD COMPANY, Complainant,
vs.
H. M. BOSWORTH et al., Defendants.

Second Supplemental Bill.

The complainant, Illinois Central Railroad Company, by way of a second supplemental bill, and insisting upon all the allegations in its bill of complaint and supplemental bill of complaint herein, now again supplements its said bill by the following allegations to-wit:

The defendants, Robert L. Greene, Sherman Goodpaster and James P. Lewis have qualified respectively as Auditor, Treasurer and Secretary of State of the Commonwealth of Kentucky, and have, since January 3, 1916, composed and now compose the State Board of Valuation and Assessment of the State of Kentucky, and said Greene has been since that date and is now ex officio the Chairman of said Board.

That Thomas M. Jones, who is a citizen of the State of Kentucky and a resident of the Eastern District thereof, has been appointed and qualified and is now acting as the Assistant Auditor of the State of Kentucky, and said Jones is now made a defendant herein.

That defendant M. M. Logan has qualified as Attorney General of the State of Kentucky, and has, since January 3, 1916, been acting and is acting as such.

That said M. M. Logan on January 3, 1916, appointed defendants Charles H. Morris, O. S. Hogan, and D. O. Myatt as, respectively, First, Second, and Third Assistant Attorneys General, who, since their appointment, have duly qualified and have continued to act and are now acting as such officers.

307 The defendant Victor A. Bradley qualified on the same day as Commonwealth's Attorney for the district wherein Franklin County is situate, under the new term for which he was elected and has since continued to act and is now acting as such.

The complainant reiterates all the allegations contained in its original and in its supplemental bill of complaint, and prays as is prayed in each of said pleadings and for all further relief to which in equity the complainant may appear to be entitled.

BLEWETT LEE,
TRABUE, DOOLAN & COX,
Attorneys for Complainant.

308 On the day following, to-wit, on June 28, 1916 the following orders were made and entered herein, to-wit:

United States District Court, Sixth Circuit, Eastern District of Kentucky.

769.

ILLINOIS CENTRAL RAILROAD COMPANY, Appellant,
vs.
ROBERT L. GREENE et al., Appellees.

Order.

This cause having been heard, and submitted to the Court, and the Court being advised, enters herein a decree which is this day spread at large upon the order book; and it appearing to the Court that the complainant would suffer irreparable damage and injury if the interlocutory injunction herein were not continued pending an appeal, and status quo maintained during the pendency of such appeal, it is accordingly ordered, adjudged, and decreed that the said interlocutory order of injunction be, and it is hereby, continued in force until the said appeal is heard and determined in the Supreme Court of the United States, or as that Court may otherwise order, and until the final order made after or pursuant to the judgment of said Supreme Court, the appellant having executed bond in the sum of Twenty-eight Thousand, Nine Hundred and Sixty Dollars, conditioned as is usual in cases of appeal for the payment of judgment and costs in the event said appeal be determined adversely to the said appellant.

309 # 769.

ILLINOIS CENTRAL RAILROAD COMPANY, Complainant,
v.
HENRY M. BOSWORTH et al., Defendants.

Final Decree.

At a Court held for the Court aforesaid on the 28th day of June, 1916;

Present: The Honorable A. M. J. Cochran, District Judge.

This cause coming on for hearing was argued by counsel, and the Court having on the 31 day of August, 1915, handed down an opinion indicating the conclusions reached by the Court, and complainant having tendered and filed a petition for rehearing or modification, and said petition having been considered by the Court, and response thereto having been delivered, said opinion, said petition, and said response are ordered to be filed and made part of the record, and thereupon and upon consideration of the whole record, includ-

ing said petition, it is ordered, adjudged and decreed that the defendants, Robert L. Greene, Sherman Goodpaster, and James P. Lewis, the successors respectively of the original defendants in this suit, Henry M. Bosworth, Thomas S. Rhea, and Carl F. Crecelius, individually and as constituting the Board of Valuation and Assessment of the State of Kentucky and the defendant Robert L. Greene (successor of the defendant, Henry M. Bosworth), Auditor of Public Accounts of the State of Kentucky, and the defendant, Thomas M. Jones (successor of the original defendant, G. B. Likens),
310 Assistant Auditor of Public Accounts of the State of Kentucky, and their successors in office respectively, hereafter elected and qualified, are hereby perpetually enjoined and restrained from apportioning or attempting to apportion to any counties, cities, towns or taxing districts in the State of Kentucky any assessment of complainant's franchise for taxation in the State of Kentucky for the year 1913 in excess of the sum of Two Million, One Hundred Sixty-one Thousand, and Sixty-seven Dollars ($2,161,067.00), it appearing to the Court that the complainant is not liable to any franchise tax assessment for said year in excess of the sum of Two Million, One Hundred Sixty-one Thousand, and Sixty-seven Dollars ($2,161,067.00) in addition to the assessment upon which complainant has already made payment under the order of preliminary injunction in this suit to the state, counties, cities, towns and taxing districts of the state, to wit: Six Million Dollars ($6,000,000.00), and the defendants, M. M. Logan (successor of the original defendant, James Garnett), and the defendants Charles H. Morris, O. S. Hogan, D. O. Myatt, Victor A. Bradley and Wiley C. Marshall, whether acting individually or officially, are hereby respectively enjoined and restrained from instituting or prosecuting an action or proceeding, or prosecuting any indictment, warrant, or other proceeding in Court, or at law to coerce the payment by complainant of any taxes upon any assessment, or any part thereof, or what purports to be, or to be a part of any assessment, whether on behalf of the Commonwealth or any county, city, town or taxing district in excess of Two Million, One Hundred Sixty-one Thousand, and Sixty-seven Dollars ($2,161,067.00);
311 And the said Robert L. Greene, Auditor, and Thomas M. Jones, Assistant Auditor, are perpetually enjoined and restrained from entering in account as a demand payable at the Treasury of the Commonwealth of Kentucky any amount of taxes based on any assessment of complainant's franchise in excess of an assessment at the aforesaid sum of Two Million, One Hundred Sixty-one Thousand, and Sixty-seven Dollars ($2,161,067.00) for the year 1912, and from causing or taking any proceedings of any kind to be instituted against complainant because of any failure or refusal to pay franchise taxes for said year 1913 based upon an assessment at a sum greater than the said sum of Two Million, One Hundred Sixty-one Thousand, and Sixty-seven Dollars ($2,161,067.00), and each and all of the defendants, whether acting individually or assuming to act in their respective official capacities, are perpetually enjoined and restrained from instituting or prosecuting any proceeding

or proceedings against the complainant, whether by indictment, civil action, or otherwise, to recover taxes or penalties because of any alleged delinquency of complainant in its failure to pay taxes based upon any assessment in excess of said sum of Two Million, One Hundred Sixty-one Thousand, and Sixty-seven Dollars ($2,161,-067.00); and that complainant recover of the defendants its costs herein incurred to be taxed according to law;

And it is further considered, ordered, adjudged and decreed that the preliminary order of injunction herein is continued and retained as to the aforesaid sum of Two Million, One Hundred Sixty-one Thousand, and Sixty-seven Dollars ($2,161,067.00), until twenty days after notice from the defendant, Robert L. Green, Auditor aforesaid, to the complainant of the amount of taxes due the
312 State, and notices from the proper officers of the amounts by said Greene, as Auditor aforesaid, certified to the proper officers of the counties, cities, towns and taxing districts, and the defendants hereinbefore mentioned are hereby enjoined and restrained with reference to said sum of Two Million, One Hundred Sixty-one Thousand, and Sixty-seven Dollars ($2,161,067.00), as with reference to any sum in excess thereof until said complainant shall have had twenty days after the notices aforesaid of the amounts due as aforesaid within which to pay said sums so certified to complainant as aforesaid.

313 #769.

ILLINOIS CENTRAL RAILROAD COMPANY
vs.
HENRY M. BOSWORTH et al. and ROBERT L. GREEN et al., Their Successors.

This day came the complainant by Trabue, Doolan and Cox, its attorneys and filed herein and presented to the court its petition for appeal and assignment of errors, intended to be urged by them, praying, also, that a transcript of the record and proceedings and papers upon which the decree herein was rendered, duly authenticated, be sent to the Supreme Court of the United States, and that such other and further proceedings may be had as may be proper in the premises.

On consideration whereof, the court does allow the appeal upon the plaintiffs giving bond according to law, in the sum of $28,960.00, which shall operate as a supersedeas bond.

Came the plaintiff by its attorneys, and presented to the court a bond on appeal herein, and the same is approved by the court and ordered filed and the appeal is allowed.

314 On the same day, to-wit, on June 28, 1916, the following order approving the Bill of Evidence was made and entered herein, to-wit:

#769.

ILLINOIS CENTRAL RAILROAD COMPANY
vs.
H. M. BOSWORTH et al. and ROBT. L. GREENE*m* et al., Their Successors.

Came the complainant by Edmund F. Trabue its attorney; came also the defendants by M. M. Logan, Attorney General for Kentucky, their attorney, and presented to the court a Bill of Evidence herein material to the issues involved in the Appeal and Cross Appeal sued out herein and the same is approved by the court and signed, sealed and made a part of the record herein.

315 Said Bill of Evidence was and is in words and figures as follows, to-wit:

See pages — to — of transcript of record on appeal in case #731 for Bill of Evidence which is to be incorporated in case #731 but also to be used in this case #769.

See letter of July 5, 1916, from Clerk of Supreme Court to Complainant's Attorney for authority for so doing.

316 Exhibit 1 with affidavit of William L. Tarbett referred to in Bill of Evidence is as follows, to-wit:

Copied in case #731 but not evidence in this case.

317 Exhibit Tarbet #2 referred to in Bill of Evidence is as follows:

2nd Case, # 769.

1912 *Return and Data.*

1913 Assessment.

Correct Methods of Fixing the Value of the "Capital Stock" of 564 Miles of Railroad Operated by I. C. R. R. Co. in Kentucky.

Income Method.

System Net that can properly be capitalized:

1908	$13,419,391
1909	13,464,357
1910	12,787,921
1911	15,898,182
1912	8,416,809
Average	12,757,332

	Capitalized at 6%.	Capitalized at 7%.	Capitalized at 8%.
	$212,622,200	$182,247,600	$159,466,650
Ky. Mileage prorate....	12.3%	12.3%	12.3%
	26,152,532	22,416,455	19,614,398
a/c Excess Outside Ky..	61%	61%	61%
	15,953,044	13,674,038	11,964,783
a/c Equalization.....	60%	60%	60%
	9,571,826	8,204,423	7,178,870
Deduct Tangible	12,478,903	12,478,903	12,478,903

318 Exhibit Tarbett 3 referred to in Bill of Evidence is as follows, to-wit:
Copied in case #731 but not evidence in this case.

319 Exhibit Tarbet #4 referred to in Bill of Evidence is as follows:

2nd Case #769.

1912 Return and Data.

1913 Assessment.

Stock and Bond Method.

Market Value at average quotations of all stock and Bonds Outstanding, not in Company's Treasury, and excluding investments in securities in the L., N. O. & T. Railway.....	$299,058,719
Less Cost or Book Value stocks, bonds, cash, noted advances, and miscellaneous property not used for railroad purposes, located outside the State and having their situs outside the State of Kentucky.....	46,836,867
Balance to prorate.....	252,221,852
Kentucky mileage prorate.....	12.3%
	31,023,288
61% a/c Excess Value Outside Kentucky.....	61%
	18,924,206
Equalize at 60%.....	60%
	11,354,524
Tangible	12,478,903

Capital Stock:

Illinois Central R. R. Co. Capital Stock	.....
Chicago, St. Louis & New Orleans R. R. Co. Capital Stock	.....
Dubuque & Sioux City R. R. Co. Capital Stock	.....
	.....

Funded Debt:	Amount outstanding at close of year.
Sterling 6% extended as 4% of 1951	$2,500,000
Sterling 5% of 1905 extended as gold 3½%	1,000,000
Gold 4% of 1951	1,500,000
Gold 3½% of 1951	2,499,000
Sterling 3% of 1951	2,500,000
Sterling 5%, extended as gold 3½% of 1951	3,000,000
Currency Kankakee & Southwestern R. R. 5% of 1921	968,000
Sterling 3½% of 1950	5,266,000
Gold 4% of 1952	15,000,000
Gold Cairo Bridge 4% of 1950	3,000,000
Gold 4% of 1953	25,000,000
Gold Western Lines 4% of 1951	5,425,000
Gold St. Louis Division 3% of 1951	4,998,000
Gold St. Louis Division 3½% of 1951	8,377,000
Gold Louisville Division 3½% of 1953	23,888,000
Gold Springfield Division 3½% of 1951	2,000,000
Gold Omaha Division 3% of 1951	5,000,000
Gold Litchfield Division 3% of 1951	3,235,000
Gold Purchased Lines 3½% of 1952	12,000,000
Gold Refunding 4% of 1955	32,740,000
Belleville & Carondelet R. R. Co. 6% of 1923	470,000
Carbondale & Shawneetown R. R. Co. 4% of 1932	241,000
St. Louis Southern R. R. Co. 4% of 1931	538,000
St. Louis Southern R. R. Co. Income 6% of 1931	6,000
First Lien Equipment 4%	24,485,000
D. & S. C. R. R.—Iowa Falls & Sioux City 7% of 1917	2,800,000
" Cherokee & Dakota 5% of 1935	3,100,000
" Cedar Rapids & Chicago 5% of 1935	830,000
C. St. L. & N. O. R. R.—5% of 1951	16,635,000
" 3½% of 1951	1,359,000
" Memphis Division 4% of 1950	3,500,000
" Cairo Bridge 5% of 1950	3,000,000
	216,860,000

Total Stock and Funded Debt .....

Central Railroad System, Excluding Amounts Held in Company's Treasury, as of June 30th, 1912, Based on the ring the Year Ended June 30th, 1912, as Reported by the Commercial and Financial Chronicle.

	Amount outstanding at close of year.	Amount not held in treasury.	Market value. Highest quotation.	Market value. Average quotation.	Value of amount not held in treasury based on highest quotation.	Value of amount not held in treasury based on average quotation.
.....	$109,296,000	$109,288,300	146⅞	135.93	$160,517,191	$148,555,586
.....	10,000,000	9,989,800	94¼	91.65	9,402,899	9,155,652
.....	11,759,500	12,600	.....	.....	(Nominal)	(Nominal)
.....	131,055,500	119,290,700	.....	.....	169,920,090	157,711,238

Amount not held in treasury.	Deduct bonds secured by bonds of the L. N. O. & T. Ry. Co.	Net amount not held in treasury.	Market value. Highest quotation.	Market value. Average quotation.	Value of amount not held in treasury based on highest quotation.	Value of amount not held in treasury based on average quotation.
$2,500,000	.....	$2,500,000	98⅝	97.82	$2,465,625	$2,445,500
1,000,000	.....	1,000,000	88⅜	87.28	883,750	872,800
1,500,000	.....	1,500,000	104	102.4	1,560,000	1,536,000
2,499,000	.....	2,499,000	91	90.5	2,274,090	2,261,595
2,500,000	.....	2,500,000	74⅝	74.67	1,865,625	1,866,750
3,000,000	.....	3,000,000	90	89.24	2,700,000	2,677,200
968,000	.....	968,000	105⅞	105.71	1,024,879	1,023,273
5,266,000	.....	5,266,000	88⅜	87.28	4,653,828	4,596,165
15,000,000	.....	15,000,000	100	99.09	15,000,000	14,863,500
3,000,000	.....	3,000,000	95	95.	2,850,000	2,850,000
24,929,000	24,929,000	.....	.....	.....	.....	.....
5,425,000	.....	5,425,000	96½	95.88	5,235,125	5,201,490
4,998,000	.....	4,998,000	75½	75.5	3,773,490	3,773,490
8,377,000	.....	8,377,000	86¾	86.04	7,267,048	7,207,571
21,788,000	.....	21,788,000	87¼	85.96	19,010,030	18,728,965
2,000,000	.....	2,000,000	87	85.17	1,740,000	1,703,400
5,000,000	.....	5,000,000	75	75.	3,750,000	3,750,000
3,148,000	.....	3,148,000	73½	73.5	2,313,780	2,313,780
12,000,000	.....	12,000,000	88	86.79	10,560,000	10,414,800
32,740,000	.....	32,740,000	96¾	96.18	31,675,950	31,489,332
470,000	.....	470,000	117½	114.03	552,250	535,941
241,000	.....	241,000	96	96.	231,360	231,360
528,000	.....	538,000	95	93.59	511,100	503,514
6,000	.....	6,000	.....	.....	(Nominal)	(Nominal)
.....	.....	.....	.....	.....	.....	.....
2,800,000	.....	2,800,000	113¼	112.17	3,171,000	3,140,760
.....	.....	.....	.....	.....	.....	.....
.....	.....	.....	.....	.....	.....	.....
11,289,000	.....	11,289,000	116	114.5	13,095,240	12,925,905
1,359,000	.....	1,359,000	85½	84.44	1,161,945	1,147,540
3,500,000	.....	3,500,000	95	93.91	3,325,000	3,286,850
.....	.....	.....	.....	.....	.....	.....
177,841,000	24,929,000	152,912,000	.....	.....	142,651,106	141,347,481
.....			.....	.....	312,571,196	299,058,719

320 Exhibit Tarbet #5 referred to in Bill of Evidence is as follows:

The letter referred to of W. L. Tarbet, in his testimony, as received from the State Auditor's Office, is as follows:

"STATE OF KENTUCKY,
OFFICE AUDITOR OF PUBLIC ACCOUNTS,
FRANKFORT, November 18, 1912.

Hon. Wm. L. Tarbet, Land and Tax Commissioner, I. C. R. R. Co., Chicago, Ill.

DEAR SIR: Responding to yours of the 16th, I take pleasure in giving you the information called for.

1900.

Total value of lands	$251,850,226.00
" " " town lots	197,550,431.00
Implements and Machinery	10,503,439.00
Live Stock	36,513,119.00

1910.

Total value of lands	$341,895,099.00
" " " town lots	286,110,991 00
Implements and Machinery	12,214,470.00
Live Stock	45,444,744.00

I think this is what you want. You did not mention town lots and in case this is not desired same may be deducted. By buildings I suppose you meant the improvements which are included in "Lands."

Hope this will be satisfactory.

Yours very truly,

G. B. LIKENS,
Assistant Auditor."

321 Exhibit Blauvelt 1 referred to in Bill of Evidence is as follows, to-wit:

(Here follows Tabular Statement, marked page 322.)

323 Exhibit Blauvelt 2 referred to in Bill of Evidence is as follows, to-wit:

Copied in case #731 but not evidence in this case.

324 Exhibit Blauvelt 3 referred to in Bill of Evidence is as follows, to-wit:

325 **Illinois Central Railroad Company System.**

Statement Showing the Operating Income, Gross Operating Income, and Net Income from Operation of the Entire Line of the Illinois Central Railroad for Each of the Fiscal Years Ending June 30th, 1908, to June 30th, 1912, Both Dates Included.

	1912	1911	1910	1909	1908
Operating Income	7,812,718.60	14,393,048.90	12,004,673.79	12,945,934.86	12,742,868.09
Other Income:					
Rents accrued from lease of road	.....	3,084.09	15,438.50	15,143.51	7,420.24
Hire of equipment—balance	.....	510,650.73	.....	.....	.....
Other rents—joint facilities	1,172,849.35	1,194,723.12	1,256,016.46	1,097,905.35	1,014,078.05
Other rents—miscellaneous	94.18	62.96	3,738.25	162,697.12	145,813.16
Miscellaneous income—real estate revenue	187,446.12	127,763.10	138,064.74	.....	.....
" " —other items	1,178.60	569.25	23,968.92	81,160.17	72,679.82
Total Other Income	1,361,568.25	1,836,853.25	1,437,226.87	1,356,906.15	1,239,991.27
Gross Operating Income	9,174,286.85	16,229,902.15	13,441,900.66	14,302,841.01	13,982,859.36
Deductions from Income:					
Hire of equipment—balance	154,893.65	.....	45,361.28	183,554.42	36,846.89
Other rents—joint facilities	593,822.72	524,702.42	588,300.98	638,246.31	522,563.32
Miscellaneous rents	8,761.83	7,017.61	20,317.26	16,683.59	4,058.09
Total Deductions	757,478.20	531,720.03	653,979.52	838,484.32	563,468.30
Net Income from Operation	8,416,808.65	15,698,182.12	12,787,921.14	13,464,356.69	13,419,391.06

THIS PAGE BOUND VERTICAL IN BOOK

326 The part of affidavit of George W. Lamb referred in Plaintiffs' stipulation and in Bill of Evidence is as follows, to-wit: Heretofore copied.

The part of census Bulleton 21 Commercial Valuation of Railway operating property in the United States: 1904 is referred to & embraced in the foregoing Bill of Evidence:

327 Said Petition for Appeal and Assignment of Errors are as follows:

Filed Jun- 28, 1916. J. W. Menzies, U. S. Clerk.

United States District Court, Sixth Circuit, Eastern District of Kentucky.

#769.

ILLINOIS CENTRAL RAILROAD COMPANY, Appellant,
vs.
ROBERT L. GREENE et al., Appellee.

Petition for Appeal.

The above named complainant conceiving itself aggrieved by the decree entered in this suit on the 28th day of June, A. D. 1916, doth hereby appeal from the said decree of the Supreme Court of the United States, and pray- that its appeal may be allowed; and that a transcript of the record and proceedings and papers upon which the said decree was made, duly authenticated, may be sent to the Supreme Court of the United States.

BLEWETT LEE,
EDMUND F. TRABUE,
JOHN C. DOOLAN,
ATTILLA COX,
Counsel for Appellant.

Granted this June 28, 1916.
A. M. J. COCHRAN, *Judge.*

The assignment of errors above referred to are as follows:

United States District Court, Sixth Circuit, Eastern District of Kentucky.

ILLINOIS CENTRAL RAILROAD COMPANY, Appellant,
vs.
ROBERT L. GREENE et al., Appellees.

Assignment of Errors.

Appellant, Illinois Central Railroad Company, of Illinois, feeling itself aggrieved by the decree in the above entitled cause, comes by its counsel and assigns the errors thereto as follows, towit:

328

I.

The District Court erred in refusing to hold that the capital stock value of appellant did not exceed the value of the total tangible property of appellant, and that, therefore, there was no value assessable for franchise taxation.

II.

The District Court erred in holding that the Kentucky statute, properly construed, required an apportionment of the total stock value of appellant to Kentucky, and a deduction from Kentucky's proportion thereof of the value of the tangible property of appellant in the State of Kentucky, instead of holding that the total tangible property of appellant in Kentucky and elsewhere should be first deducted from the total capital stock value of appellant before apportionment to the State of Kentucky.

III.

The District Court erred in requiring appellant to pay taxes upon a franchise valuation of Six Million ($6,000,000.00) Dollars, or upon any other sum as a condition precedent to the Court's granting to appellant the preliminary or interlocutory injunction, and in declining to grant such injunction without such payment.

IV.

The District Court erred in refusing to hold in accordance with complainant's claim that complainant was entitled to equalization at the rate of 52 percent of the fair cash value of its total capital stock apportionable to the State of Kentucky instead of an equalization at 60 percent.

V.

The District Court erred in making equalization of the capital stock assessment of complainant (at 60 percent) upon Thirty-four Million, Four Hundred Thousand ($34,400,000.00) Dollars as the

fair cash value of the portion of complainant's unit in Kentucky instead of the sum of Twenty-three Million, Six Hundred
329 Seventy-nine Thousand, One Hundred and Eighty ($23,679,-180.00) Dollars, the latter sum being the amount which, as complainant claims, was found by the Board as the fair cash value of complainant's capital stock apportionable to Kentucky.

VI.

The District Court erred in holding that the assessment which the defendants assumed to make against the complainant was maintainable to the extent of Two Million, One Hundred Sixty-one Thousand, and Sixty-seven ($2,161,067) Dollars, or any other sum, in addition to the assessment upon which the complainant had already paid taxes, to-wit: Six Million ($6,000,000) Dollars.

VII.

The Court erred in holding that complainant's attack on the assessment, which defendants' predecessors assumed to make in this case, did not involve the charge of fraud, but only of a fundamentally wrong principle.

VIII.

The District Court erred in holding that said Court had no power to review the action of the predecessors of defendants in capitalizing the earnings of complainant at 6 percent instead of 7½ or 8 percent, the latter rate being as contended for by complainant indispensable to a real criterion of value inasmuch as a steady income of 6 percent could not be made without allowing 7½ or 8 percent interest or income upon the value invested in railway property because of the cost of indispensable non-income producing expenditures for betterments, improvements, and other items equalling from 1½ to 2 percent of the net income of complainant and of railroad companies generally.

IX.

The District Court erred in holding that it had no power to revive or correct, vacate or modify, the action of the predecessors of defendants in arbitrarily selecting for capitalization the gross
330 corporate income of complainant instead of complainant's net income; nor in arbitrarily selecting for capitalization complainant's income for some particular year or collection of years when the earnings of complainant happened to be especially high; nor in ignoring the amount of complainant's net income for the current year in selecting years' incomes for capitalization; nor in selecting for capitalization the so-called Kentucky earnings of complainant instead of the earnings of complainant's entire railway system which the statutes of Kentucky required said predecessors of defendants to consider; nor in arbitrarily valuing the bonds issued by complainant at par when said bonds did not exceed in value more than four-fifths

thereof; nor in taking the highest price brought upon the stock market by the capital stock of complainant instead of the average price.

X.

The District Court erred in holding that it had no power to correct the mistakes made by said predecessors of the defendants, if their acts resulted from mistakes, in selecting for capitalization the wrong items as income; nor in fixing at par the value of bonds bearing such a rate of interest as showed them worth far less.

XI.

The District Court erred in refusing to make any deduction from the franchise tax valuation which defendants assumed to make against complainant on account of the excess value mile for mile of complainant's railroad outside the State of Kentucky over such value mile for mile inside said State.

XII.

The District Court erred in refusing to deduct from said franchise tax valuation which said defendants' predecessors assumed to make against plaintiff anything on account of the excess value outside the State as compared with the value inside the State of complainant's railroad because of the great value of complainant's terminals situated outside the State of Kentucky.

331 XIII.

The District Court erred in holding that the assessment which the predecessors of defendants assumed to make against complainant was not assailable on the ground that the capital stock valuation which they assumed to make was apportioned to Kentucky upon the basis of the ratio of the length of lines operated, owned, and leased, instead of the lines operated, owned, leased, or controlled, when the statute required such apportionment upon the ratio of the length of lines operated, owned, leased or controlled in Kentucky to such length in Kentucky and elsewhere.

XIV.

The District Court erred in refusing to apply a correction by way of deduction from the amount of the franchise assessment made by the predecessors of defendants against complainant on account of the value of securities held in the treasury of complainant in its home office outside the State of Kentucky, which securities, as complainant claimed, constituted no part of the railroad system or unit distributable among the states having franchise tax valuation laws.

XV.

The District Court erred in holding that complainant was not denied the equal protection of the laws in being assessed by said predecessors of defendants by a different method from that used in the case of other persons belonging to the same class and similarly situated.

XVI.

The District Court erred in not making equalization of the capital stock assessment of complainant which the said predecessors of defendants assumed to make at 52 percent instead of 60 percent.

BLEWETT LEE,
EDMUND F. TRABUE,
JOHN C. DOOLAN,
ATTILLA COX,
Counsel for Appellant.

Filed this June 28, 1916.
A. M. J. COCHRAN, *Judge.*

Filed Jun- 28, 1916. J. W. Menzies, U. S. Clerk.

Said Appeal Bond approved and filed June 28, 1916, is as follows, to-wit:

332 Filed Jun- 28, 1916. J. W. Menzies, U. S. Clerk.

United States District Court, Sixth Circuit, Eastern District of Kentucky.

#769.

ILLINOIS CENTRAL RAILROAD COMPANY, Appellant,
v.
ROBERT L. GREENE et al., Appellees.

Bond.

Know all men by these presents:

That the Illinois Central Railroad Company, of Illinois, a corporation, is held and firmly bound unto the above named Robert L. Greene, Sherman Goodpaster, James P. Lewis, Thomas M. Jones, M. M. Logan, Charles H. Morris, O. S. Hogan, E. O. Myatt, Victor A. Bradley, and Wiley C. Marshall, in the sum of Twenty Eight Thousand, Nine Hundred and Sixty Dollars, ($28,960.00) *Dollars*, to be paid to the obligee herein, to which payment well and truly to be made it binds itself, and its successors firmly by these presents;

Sealed with its seal and dated the 28th day of June, A. D. 1916.

[SEAL.] ILLINOIS CENTRAL RAILROAD COMPANY,
By EDMUND F. TRABUE, *Attorney.*

Whereas, the above named Illinois Central Railroad Company of Illinois has prosecuted an appeal to reverse the decree rendered on this the 28th day of June, 1916, by the United States District Court in the case of the said appellant against said appellees:

Now, therefore, the condition of this obligation is such that if the above named appellant, Illinois Central Railroad Company,
333 of Illinois, shall prosecute said appeal and shall answer all judgment costs that may be awarded against it if it fails to make its plea good, then the above obligation to be void; otherwise to remain in full force and virtue.

Sealed in the presence of us this the 28th day of June, A. D. 1916.

E. L. WORTHINGTON.
EDNA LEONARD.

Approved this 28th day of June, 1916.

A. M. J. COCHRAN,
Judge United States District Court,
Eastern District of Kentucky.

334 On the same day to-wit, on June 28, 1916, the following citation issued herein, same being filed in clerk's office of this court on June 29, with acceptance of service endorsed thereon, to-wit:

See Page 1 of this transcript.

335 On July 12, 1916, the following order was made and entered herein, to-wit:

#769.

ILLINOIS CENTRAL RAILROAD COMPANY
vs.
HENRY M. BOSWORTH et al. and ROBERT L. GREENE et al., Their Successors.

This day came the defendants, cross appellants herein, by M. M. Logan and John L. Rich, their attorneys and filed herein and presented to the court their petition for cross appeal and their assignment of errors intended to be urged by them, praying also, that a transcript of the record and proceedings and papers upon which the decree herein was rendered, duly authenticated, be sent to the Supreme Court of the United States, and that such other and further proceedings may be had as may be proper in the premises.

On consideration whereof, the court does allow the cross appeal upon the defendants giving bond according to law, in the sum of $1,000.00.

Came the defendants by its attorneys, and presented to the court a bond on cross appeal herein, and same is approved by the court and ordered filed and the cross appeal allowed.

336 Petition for Cross Appeal and Assignment of Errors filed by the foregoing order is as follows, to-wit:

Filed Jul- 12, 1916. J. W. Menzies, U. S. Clerk.

District Court of the United States for the Eastern District of Kentucky.

No. 769.

ILLINOIS CENTRAL RAILROAD COMPANY, Appellant,
v.
ROBERT L. GREENE and Others, Appellees.

Petition for Cross-Appeal.

The defendants, Robert L. Greene, Auditor, Sherman Goodpaster, Treasurer, James P. Lewis, Secretary of State, constituting the Board of Valuation and Assessment for the State of Kentucky, M. M. Logan, Attorney General of the State of Kentucky, Charles H. Morris, First Assistant Attorney General, O. S. Hogan, Second Assistant Attorney General, D. O. Myatt, Third Assistant Attorney General, Thomas M. Jones, Assistant Auditor, Victor A. Bradley, Commonwealth's Attorney for the Franklin Circuit Court and W. C. Marshall, County Attorney of Franklin County, conceiving themselves aggrieved by the decree entered in this suit on the 28th day of June, 1916, do hereby appeal from the said decree to the
337 Supreme Court of the United States, and pray that their appeal may be allowed and that a transcript of the record and proceedings and papers upon which said decree was made, duly authenticated, may be sent to the Supreme Court of the United States, and they assign for error.

1. The action of the court in overruling defendants' motion to dismiss on the grounds that the district court had no jurisdiction to hear this cause.

2. The action of the court in overruling defendants' motion to dismiss on the grounds that the bill of complaint shows no equity on its face.

3. The action of the court in overruling defendants' motion to dismiss on the grounds that plaintiff has an adequate remedy at law.

4. The action of the court in overruling defendants' motion to dismiss on the grounds that the bill states no cause of action against the defendants or either of them under the laws of this State or under the laws of the United States.

5. The action of the court in overruling defendants' motion to dismiss on the grounds that this is a suit against the State of Kentucky.

6. The action of the court in holding in the decree that plaintiff's property should not be assessed at more than 60 per cent of its fair cash value estimated at the price it would bring at a fair
338 voluntary sale for the supposed reason or for the reason that other property in the State, or a great bulk of the other property in the State, is habitually, wilfully, intentionally and sys-

tematically assessed at not more than 60 per cent of its fair cash value estimated at the price it would bring at a fair voluntary sale.

7. The action of the court in holding that other property in the state, or a great bulk of other property in the State, is habitually, intentionally and systematically assessed at not more than 60 per cent of its fair cash value estimated at the price it would bring at a fair voluntary sale.

8. The action of the court in holding that the Board of Valuation and Assessment followed a fundamentally wrong method in assessing plaintiff's property for taxation.

9. The action of the court in granting a decree enjoining the collection of taxes by the State of Kentucky and the county and taxing districts in the State, based upon an assessment greater than 60 per cent of the fair cash value of plaintiff's property estimated at the price it would bring at a fair voluntary sale.

10. The action of the court in holding any part of the assessment made by the Board of Valuation and Assessment of plaintiff's property void, and in granting a decree enjoining the collection of any part of the taxes due based upon an assessment of plaintiff's property at the sum of $23,679,180.

339 Wherefore, the defendants pray that the decree of the District Court be reversed.

M. M. LOGAN,
Attorney General, Counsel for Defendants.

Appeal allowed as prayed for, bond in the penalty of $1,000.00.

A. M. J. COCHRAN,
Judge of the District Court of the United States for the Sixth Circuit and the Eastern District of Kentucky.

340 Bond on Cross Appeal approved by the foregoing order is as follows, to-wit:

Filed Jul- 12, 1916. J. W. Menzies, U. S. Clerk.

District Court of the United States for the Eastern District of Kentucky.

No. 769.

ILLINOIS CENTRAL RAILROAD COMPANY, Appellant,
v.
ROBERT L. GREENE and Others, Appellees.

Bond.

Know all men by these presents, that we, Robert L. Greene, Auditor, Sherman Goodpaster, Treasurer, James P. Lewis, Secretary of State, M. M. Logan, Attorney General, Charles H. Morris, First

Assistant Attorney General, O. S. Hogan, Second Assistant Attorney General, D. O. Myatt, Third Assistant Attorney General, Thomas M. Jones, Assistant Auditor, Victor A. Bradley, Commonwealth's Attorney for the Franklin Circuit Court, Wiley C. Marshall, County Attorney of Franklin County, as principals, and Robert L. Greene, Sherman Goodpaster, James P. Lewis and M. M. Logan, sureties, acknowledge ourselves to be jointly indebted to the Illinois Central Railroad Company, appellant in the above cause, in the sum of $1,000.00, conditioned that whereas on the 28th day of June, 1916,
341 in the United States District Court for the Eastern District of Kentucky, in a suit depending in that court wherein the above mentioned principals were defendants and the Illinois Central Railroad Company was plaintiff, numbered on the equity docket as 769, a decree was rendered against the said above mentioned principals, and they having obtained a cross appeal to the Supreme Court of the United States and filed a copy thereof in the office of the clerk of the court to reverse the said decree, and a citation directed to the said Illinois Central Railroad Company citing and admonishing it to be and appear at a session of the Supreme Court of the United States to be holden in the City of Washington on the 10th day of August 1916 next. If the said above mentioned principals shall prosecute their appeal to effect and answer all cost if they fail to make plea good then the above obligation to be void, else to remain in full force and virtue.

ROBERT L. GREENE, *Auditor;*
SHERMAN GOODPASTER, *Treasurer;*
JAMES P. LEWIS, *Secretary of State;*
M. M. LOGAN, *Attorney General;*
CHARLES H. MORRIS, *1st Ass't Att'y Gen'l;*
O. S. HOGAN, *2nd Ass't Att'y Gen'l;*
D. O. MYATT, *3rd Ass't Att'y Gen'l;*
THOMAS M. JONES, *Assistant Auditor;*
VICTOR A. BRADLEY, *Commonwealth's Attorney for the Franklin Circuit Court;*
WILEY C. MARSHALL, *County Attorney of Franklin County,*

By M. M. LOGAN, *Attorney General,*
Counsel for Appellants.

M. M. LOGAN.
SHERMAN GOODPASTER.
ROBT. L. GREENE.
JAMES P. LEWIS.

342 Citation on Cross Appeal issued July 12, 1916 and filed July 14, 1916 with acceptance service endorsed thereon is as follows, to-wit:

See page 2.

343 UNITED STATES OF AMERICA,
Eastern District of Kentucky, ss:

I, John W. Menzies, Clerk of the District Court of the United States for the Eastern District of Kentucky, do hereby certify *that* the foregoing 342 pages to be a full, true and correct transcript of the record in the cause lately pending in the said Court wherein Illinois Central Railroad Company was complainant and H. M. Bosworth, Carl F. Crecelius and Thos. S. Rhea et al. were Defendants, in Equity No. 769, as required by the stipulation of counsel therein, and the præcipe of the parties removing the case, as the same appears on file and of record in my office.

In Testimony Whereof, I have hereunto set my hand as Clerk of the aforesaid Court, and affixed the seal thereto, at Frankfort, in said District, this the 19th day of August, A. D. 1916 and of the Independence the 141st year.

[Seal Eastern Kty. Dist. Court, United States of America.]

JOHN W. MENZIES,
Clerk United States District Court,
Eastern District of Kentucky,
By CHAS. N. WIARD,
Deputy Clerk.

Endorsed on cover: File No. 25,474. E. Kentucky D. C. U. S. Term No. 644. Illinois Central Railroad Company, appellant, vs. Robert L. Greene, Auditor; Sherman Goodpaster, Treasurer; James P. Lewis, Secretary of State, constituting the Board of Valuation and Assessment for the State of Kentucky, et al. File No. 25,475. Term No. 645. Robert L. Greene, Auditor, et al., constituting the Board of Valuation and Assessment for the State of Kentucky, et al., appellants, vs. Illinois Central Railroad Company. Filed August 31st, 1916. File Nos. 25,474 and 25,475.

FILED
OCT 2 1916
JAMES D. MAHER
CLERK

Supreme Court of the United States

No. 642

Illinois Central Railroad Company, - - - Appellant,

vs.

Robt. L. Greene, et al., - - - - - - - - Appellees.

No. 644

Illinois Central Railroad Company, - - - Appellant,

vs.

Robt. L. Greene, et al., - - - - - - - - Appellees.

No. 643

Robt. L. Greene, et al., - - - - - - - - Appellants,

vs.

Illinois Central Railroad Company, - - - Appellee.

No. 645

Robt. L. Greene, et al., - - - - - - - - Appellants,

vs.

Illinois Central Railroad Company, - - - Appellee.

Motion by Robt. L. Greene, et al., to Advance These Appeals and Hear Them Together and With Appeals No. 617, Robt. L. Greene, et al. v. Louisville & Interurban Railway Company, and No. 618, Robt. L. Greene, et al. v. Louisville Railway Company.

M. M. LOGAN,
CHAS. H. MORRIS,
Counsel for Robt. L. Greene, et al.

EDMUND F. TRABUE,
Counsel for Illinois Central Railroad Co.

ALEXANDER POPE HUMPHREY,
Counsel.

Supreme Court of the United States

No. 642

ILLINOIS CENTRAL RAILROAD COMPANY, - - - *Appellant,*

vs.

ROBT. L. GREENE, ET AL., - - - - - - - - *Appellees.*

No. 644

ILLINOIS CENTRAL RAILROAD COMPANY, - - - *Appellant,*

vs.

ROBT. L. GREENE, ET AL., - - - - - - - - *Appellees.*

No. 643

ROBT. L. GREENE, ET AL., - - - - - - - - *Appellants,*

vs.

ILLINOIS CENTRAL RAILROAD COMPANY, - - - *Appellee.*

No. 645

ROBT. L. GREENE, ET AL., - - - - - - - - *Appellants,*

vs.

ILLINOIS CENTRAL RAILROAD COMPANY, - - - *Appellee.*

MOTION BY ROBT. L. GREENE, ET AL., TO ADVANCE THESE APPEALS AND HEAR THEM TOGETHER AND WITH APPEALS NO. 617 ROBT. L. GREENE, ET AL. VS. LOUISVILLE & INTERURBAN RAILWAY COMPANY, AND NO. 618, ROBT. L. GREENE, ET AL. VS. LOUISVILLE RAILWAY COMPANY.

Come appellants, Robt. L. Greene, Auditor of the State of Kentucky, Sherman Goodpaster, Treasurer of the State of Kentucky, and James P. Lewis, Secretary of State of the State of Kentucky, constituting the Board of Valuation and Assessment of the State of Kentucky, M. M. Logan, Attorney General of the State of Kentucky, and the other appellants in appeals numbered 617, 618, 643 and 645 aforesaid, and appellees in appeals numbered 642 and 644 aforesaid, and move the court to order the cases in the caption heard together, and heard with cases numbered 617 and 618, and that the hearing of all said cases be advanced on the docket and assigned to a day for oral argument.

Appellants say that said Greene, Goodpaster and Lewis constitute the State Board for the assessment for taxation of the franchises of corporations for State, county and municipal purposes and for certifying such assessments to local officers, and that their co-appellants are charged with the duty of enforcing the collection of taxes so assessed upon corporate franchises; and that the appellants, corporations, are common carriers doing business in Kentucky and are subject to a franchise tax assessable by said board. That appellant, Illinois Central Railroad Company, has been assessed by said Board for franchise taxes in litigation in the appeals pending in this court for the years 1912 and 1913; and the appellees, Louisville Railway Company and Louisville & Interurban Railway Company, assessed for such taxes for the year 1915; and that other railroad companies have been assessed for the same years and such companies and the appellants, corporations, and appellees, corporations, herein assessed for the years 1912, 1913, 1914 and 1915, and that said corporations, or some of them, have been in litigation with appellants, Robt. L. Greene, et al., and their predecessors since the autumn of 1912 in the District Court of the United States for the Eastern District

of Kentucky, and that the litigation between such corporations and appellants, officers of the Commonwealth of Kentucky, is still pending and suits by such corporations against said State officers still re-appearing annually.

That such suits have been and are being instituted by the corporations aforesaid to enjoin the certification by said board of assessments against said corporations to the proper State and local officers for enforcement and to enjoin appellants, executive officers, from the enforcement of such assessments, and that said litigation involves, besides the suits covered by the appeals pending in the suits aforesaid, the following suits in the same court, to-wit:

No. 729. Louisville & Nashville R. R. Co. v. Robert L. Greene, et al.
No. 730. Cincinnati, N. O. & T. P. Ry. Co. v. Same.
No. 733. Chesapeake & Ohio Ry. Co. v. Same.
No. 768. Louisville & Nashville R. R. Co. v. Same.
No. 771. Cincinnati, N. O. & T. P. Ry. v. Same.
No. 775. Chesapeake & Ohio Ry. Co. v. Same.
No. 783. Chesapeake & Ohio Ry. Co. v. Same.
No. 784. Louisville & Nashville R. R. Co. v. Same.
No. 785. Cincinnati, N. O. & T. P. Ry. Co. v. Same.
No. 786. Illinois Central R. R. Co. v. Same.
No. 812. Louisville & Interurban Railroad Co. v. Same.
No. 813. Louisville & Nashville R. R. Co. v. Same.
No. 814. Chesapeake & Ohio Ry. Co. v. Same.
No. 815. Cincinnati, N. O. & T. P. Ry. Co. v. Same.
No. 816. Illinois Central Railroad Co. v. Same.

That the Louisville & Nashville Railroad Company, Illinois Central Railroad Company, Chesapeake & Ohio Railway Company, and Cincinnati, New Orleans & Texas Pacific Railway Company, have every year, beginning in 1912, instituted suits similar to the *instant* suits against the members of said Board of Valuation and Assessment

and the other officers of the Commonwealth charged with the enforcement of franchise taxes, to enjoin the enforcement of such taxes upon the assessments made by such boards, and that the Louisville & Interurban Railway Co. and Louisville Railway Co. have instituted similar suits on the assessment for the year 1915.

That about eighty per cent. of the main track mileage of all the railroads of the Commonwealth is controlled by the four railroad companies aforesaid, and that by far the most valuable part of such railroad mileage is controlled by said companies; so that there is in litigation in the suits of such companies more than ..... per cent. of the railroad franchise taxes payable by the railroad companies of the State of Kentucky, and that such taxes assessable against such railroad companies constitute a considerable per cent. of the revenues of the Commonwealth and of the counties and municipalities of the State, and that in such suits said District Court of the United States has enjoined the collection of a large part of the franchise taxes assessed by said State Board against said corporations; and that the execution of the revenue laws of the Commonwealth and of all the counties, districts and municipalities into which the lines of said railroad companies run, is obstructed and the operations of the government of the State, counties, districts and municipalities would be greatly embarrassed and obstructed by the delay in the decision of the appeals in these cases, unless the hearing of such appeals be advanced.

That the injunction suits aforesaid numbered 728, 729, 730 and 731, enjoined the collection of franchise taxes upon the four principal railroad companies of the State for the year 1912. The suits numbered 768, 769, 771 and 775 enjoined the collection of similar taxes for the year 1913; the suits numbered 783, 784, 785 and 786 enjoined the collection of similar taxes for the year 1914 and the

suits numbered 813, 814, 815 and 816 enjoined collection of similar taxation for the year 1916, and that until the determination of the appeals mentioned in the caption injunctions similar to those heretofore obtained will be obtained by said railroad companies, and the controversies between said companies and the Commonwealth, counties and municipalities as to the taxes collectible from said companies will continue to the great uncertainty and embarrassment of the State and their revenues and as to the extent of their right to tax the franchise of said companies.

That since the litigation arose between said railroad companies and the said State officers, the Louisville & Interurban Railway Co. and the Louisville Railway Co. have instituted suits in said court aforesaid similar to the suits aforesaid instituted by the said four railroad companies which first instituted suits against said officers, and have obtained injunctions prohibiting the assessment of the properties of said companies in excess of sixty per cent. of the amount assessed against said companies by said State officers, and that other corporations and wealthy individuals will follow the example of said railroad companies and institute similar suits upon similar claims; and that since the decision of said district court in the suits covered by the appeals numbered 642, 643, 644 and 645, individuals and corporations throughout the State have begun to claim that the assessment of their property, tangible and intangible, should be reduced by forty per cent., although the property of many of them has already been assessed at less than its fair cash value, and although the constitution of the State commands the assessment of all property at its fair cash value.

That the chief questions raised by the appeals mentioned in the caption, are questions arising under the Federal Constitution, and involve (a) the right of the tax payer to enjoin the acts of a State officer done in the

discharge of his duty in the assessment of taxes for the carrying on of the State, county and municipal governments in view of the provisions of the eleventh amendment of the Federal Constitution; (b) the right of the tax payer to demand that the assessment at 100 per cent. of its property be equalized at 60 per cent., as granted by the court, or at about 50 per cent. as demanded by the tax payers, railroad companies, mentioned in the caption; (c) the right of said tax payers, corporations, to require the deduction from the value of their total capital stock of the value of those stocks, bonds and other choses in action held as investments by said corporations respectively at their home offices in cities outside the State of Kentucky; and (d) the right of said tax payers, corporations, to require an abatement of the mileage proportion of the valuation of the capital stock of said corporations by the amount of what is claimed by them respectively as the assessed value mile for mile of their railroads outside the State, over the value of mile for mile inside the State; and that said points "a" and "b" have been decided by said district court in favor of said corporations, and said points "b" and "c" have been decided in favor of some and against others of said corporations; so that not only would the execution of the revenue laws of the State be obstructed and embarrassed by delay in the decision of the appeals aforesaid unless the hearing thereof be advanced, but the law relative to the points involved in such assessments would continue unsettled and similar litigation to that now pending would be renewed year after year to the embarrassment and perplexity of the taxing officers of the State and the confusion of the State's revenues.

That the appeals numbered 642, 643, 644 and 645 involve all the questions aforesaid and the appeals numbered 617 and 618 involve the questions "a" and "b" aforesaid, and that such questions constitute the principal

questions involved and virtually the only constitutional questions involved in the litigation in the railroad suits aforesaid.

That the State Treasury is greatly embarrassed by reason of a large deficit for which there is no present adequate provision by the laws of the State for a remedy, and that especially because thereof, as well as because of the continual necessity for revenue to carry on the State government, and the county and municipality governments of the State, the obstruction of the collection of taxes assessed by the State Board, and the certification by said board to local collecting officers for counties and municipalities, and upon which the Treasury of the State and of such local communities rely for the discharge of the obligations of the State, counties and municipalities, the execution of the revenue laws of the State would be greatly embarrassed by the delay hereinbefore adverted to, unless the hearing of said appeals were advanced as herein prayed.

That the State legislature at its last session appointed a Tax Commission to study the tax laws of the Commmonwealth and to report the best methods of State, county and municipality taxation, especially in view of an amendment to the State Constitution lately adopted by the people permitting the classification of property for taxation, and otherwise enlarging the discretion of taxing officers, and that said commission is about to report its recommendations to the Governor and legislature of the State, and that to receive such recommendations a special session of said legislature is about to be and probably will be called to enact laws for the State, counties and municipalities on the subject of taxation, and that it is of vital importance to the Commonwealth and to the proper execution of its revenue laws that the questions involved in the appeals mentioned in the caption should be determined as promptly as possible, and before the session of

the said legislature, which will be held about the first of the year, 1917.

Wherefore, your petitioners pray the advancement of the hearing of the appeals aforesaid.

M. M. LOGAN,
CHAS. H. MORRIS,
Counsel for Robt. L. Greene, et al.

The Illinois Central Railroad Co. above mentioned, recognizes the propriety and necessity of the foregoing motion, and consents thereto.

EDMUND F. TRABUE,
Counsel for Illinois Central Railroad Co.

The Louisville & Interurban Ry Co. and Louisville Ry. Co. consent to the motion of Robt. L. Greene, et al., in the above petition.

ALEXANDER POPE HUMPHREY,
Counsel.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1914.

ILLINOIS CENTRAL RAILROAD COMPANY, Appellant,
vs.
No. 642.
ROBERT L. GREENE, ET AL., Appellees.

ROBERT L. GREENE, ET AL., Appellants,
vs.
No. 643.
ILLINOIS CENTRAL RAILROAD COMPANY, Appellee.

ILLINOIS CENTRAL RAILROAD COMPANY, Appellant,
vs.
No. 644.
ROBERT L. GREENE, ET AL., Appellees.

ROBERT L. GREENE, ET AL., Appellants,
vs.
No. 645.
ILLINOIS CENTRAL RAILROAD COMPANY, Appellee.

BRIEF FOR ILLINOIS CENTRAL RAILROAD COMPANY WITH APPENDIX.

BLEWETT LEE,
EDMUND F. TRABUE,
Counsel.

ROBERT V. FLETCHER,
JOHN C. DOOLAN,
ATTILLA COX, JR.,
Of Counsel.

WESTERN BAG-BOOTH CO., PRINTERS, LOUISVILLE, KY.

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1916.

ILLINOIS CENTRAL RAILROAD COMPANY, - - *Appellant,*

vs. No. 642.

ROBERT L. GREENE, ET AL., - - - - - - - *Appellees.*

ROBERT L. GREENE, ET AL., - - - - - - - *Appellants,*

vs. No. 643.

ILLINOIS CENTRAL RAILROAD COMPANY, - - *Appellee.*

ILLINOIS CENTRAL RAILROAD COMPANY, - - *Appellant,*

vs. No. 644.

ROBERT L. GREENE, ET AL., - - - - - - - *Appellees.*

ROBERT L. GREENE, ET AL., - - - - - - - *Appellants,*

vs. No. 645.

ILLINOIS CENTRAL RAILROAD COMPANY, - - *Appellee.*

BRIEF FOR ILLINOIS CENTRAL RAILROAD COMPANY.

These appeals are from decrees of the United States District Court, Eastern District of Kentucky (Hon. A. M. J. Cochran, Judge), June 28, 1916 (Rec. 642, p. 183;

Rec. 644, p. 174), enjoining the enforcement of franchise tax assessments, made by persons holding State assessing offices, upon condition of the taxpayer's paying sums as taxes specified in the decrees. (The Railroad Company will be hereinafter designated except in the assignments of errors as *complainant*, and the predecessors of Robert L. Greene, *et al.*, as the *defendants*, inasmuch as all opposing litigants are appellants as well as appellee: —and the figures in the parentheses refer to pages of the printed record.)

The decrees were entered in two suits, one begun September 20, 1912 (Rec. 642, p. 3) on the assessment for 1912 taxes, and the other begun January 31, 1914 (Rec. 644, p. 3) on the assessment for 1913 taxes. For the year 1912 the defendants fixed the capital stock valuation of complainant at $27,124,240, and subtracted therefrom the tangible property assessment made by the Railroad Commission, $12,377,383, leaving franchise assessment $14,746,857, as prescribed by Kentucky legislative method (Rec. 642, p. 160), and the court granted a restraining order and afterward a final decree upon complainant's paying taxes upon an assessment of $6,618,585.00 (pp. 26, 91 and 160, 161).

For the year 1913 the assessment was $11,200,277, reached in the same way as that of 1912, by deducting from the capital stock value, $23,679,180, the assessed value of the tangible property, to-wit, $12,478,903 (Rec. 644, pp. 5 and 143), and the Court granted a restraining order upon the payment of taxes upon an assessment of $6,000,000.00 (pp. 49, 50). There were heard with these

cases similar suits instituted for similar purposes upon the assessments for both said years by the Louisville & Nashville R. R. Co., the Chesapeake & Ohio R'y Co., and the Cincinnati, N. O. & T. P. R'y Co., and the Court's opinions in the cases are reported in 209 Fed. Rep. 380, 465, 467, 469. The opinions in the *instant* cases are also found in Rec. 642, p. 160, and Rec. 644, p. 142. These cases are, by order of this Court, heard with cases 617, Robert L. Greene, *et al.*, Appellants, v. Louisville and Interurban R. R. Co., Appellee; No. 618, Greene, *et al.*, v. Louisville Railway Co.; No. ——, Greene, *et al.*, v. Louisville & Nashville R. R. Co., and No. ——, Louisville & Nashville R. R. Co. v. Greene, *et al.*, and advanced and set for hearing January 8, 1917.

The cross-appellants, Greene, *et al.*, are the successors in office respectively to the defendants, Bosworth, Rhea and Crecelius, who made the assessments attacked by the bills, but such successors took no part in the assessment (176, *et seq.*). Figures in parentheses refer to the pages of the printed record.

The *instant* cases were by stipulation consolidated; and the evidence was arranged by stipulation, affidavits being read as depositions, etc. (108, 112, 114).

JURISDICTION OF THIS COURT.

The jurisdiction of the District Court in the *instant* cases is based both upon diversity of citizenship and complainant's claim that the defendants, acting as members of a State Board, infringed complainant's rights guaranteed by the Federal Constitution, and in the com-

panion cases the jurisdiction is based solely upon the latter ground. This court, therefore, has unquestionable jurisdiction: *The Judicial Code*, Sec. 238; *Boise Water Co.* v. *Boise*, 230 U. S. 84, 91; *Johnston* v. *Gearlds*, 234 U. S. 422; *Brolan* v. *U. S.*, 236 U. S. 216; *Northwest. Laundry* v. *Des Moines*, 239 U. S. 486, 491; *Male* v. *A. T. & S. F. R'y Co.*, 240 U. S. 97; *Brushaber* v. *U. P. R. R. Co.*, 240 U. S. 1; *Stanton* v. *Baltic Mining Co.*, 240 U. S. 103; etc.

ASSIGNMENTS OF ERROR.

a.

Complainant's assignments of error to the decrees on the 1912 assessment are as follows (Rec. 642, p. 187, *et seq.*):

I.

The District Court erred in refusing to hold that the capital stock value of appellant did not exceed the value of the total tangible property of appellant, and that, therefore, there was no value assessable for franchise taxation.

II.

The District Court erred in holding that the Kentucky statute, properly construed, required an apportionment of the total stock value of appellant to Kentucky, and a deduction from Kentucky's proportion thereof of the value of tangible property of appellant in the State of

Kentucky, instead of holding that the total tangible property of appellant in Kentucky and elsewhere should be first deducted from the total capital stock value of appellant before apportionment to the State of Kentucky.

III.

The District Court erred in requiring appellant to pay taxes upon a franchise valuation of six million, six hundred and eighteen thousand, five hundred and eighty-five ($6,618,585.00) dollars, or upon any other sum as a condition precedent to the Court's granting to appellant the preliminary or interlocutory injunction, and in declining to grant such injunction without such payment.

IV.

The District Court erred in holding that although the predecessors of defendants, in the assessment which they assumed to make, had not arrived at it by the statutory method, nevertheless the complainant was not entitled to a reassessment to be made according to the statutory method.

V.

The District Court erred in making equalization of the capital stock assessment of complainant (at 60 per cent) upon thirty-three million, nine hundred and five thousand, three hundred ($33,905,300.00) dollars as the fair cash value of the portion of complainant's unit in Kentucky, instead of upon the sum of twenty-seven million, one hundred twenty-four thousand, two hundred and forty

($27,124,240.00) dollars, the latter sum being the amount which, as complainant claims, was found by the defendants' predecessors as the fair cash value of complainant's capital stock apportionable to Kentucky.

VI.

The District Court erred in holding that said Court had no power to review the action of the predecessors of defendants in capitalizing the earnings of complainant at 6 per cent instead of 7½ or 8 per cent, the latter rate being as contended for by complainant indispensable to a real criterion of value inasmuch as a steady income of 6 per cent could not be made without allowing 7½ or 8 per cent interest or income upon the value invested in railway property because of the cost of indispensable non-income producing expenditures for betterments, improvements, and other items equaling from 1½ to 2 per cent of the net income of complainant and of railroad companies generally.

VII.

The District Court erred in holding that it had no power to revise or correct, vacate or modify, the actions of the predecessors of defendants in arbitrarily selecting for capitalization the gross corporate income of complainant instead of complainant's net income; nor in arbitrarily selecting for capitalization complainant's income for some particular year or collection of years when the earnings of complainant happened to be especially high; nor in selecting for capitalization the so-called Ken-

tucky earnings of complainant instead of the earnings of complainant's entire railway system which the statutes of Kentucky required said predecessors of defendants to consider; nor in arbitrarily valuing the bonds issued by complainant at par, when said bonds did not exceed in value more than four-fifths thereof; nor in taking the highest price brought upon the stock market by the capital stock of complainant instead of the average price.

VIII.

The District Court erred in holding that it had no power to correct the mistakes made by said predecessors of the defendants, if their acts resulted from mistakes, in selecting for capitalization the wrong items as income; nor in fixing at par the value of bonds bearing such a rate of interest as showed them worth far less.

IX.

The District Court erred in holding that complainant's attack on the assessment, which predecessors of defendants assumed to make in this case, did not involve the charge of fraud, but only of the fundamentally wrong principle.

X.

The District Court erred in refusing to make any deduction from the franchise tax valuation which defendants assumed to make against complainant on account of the excess value mile for mile of complainant's railroad outside the State of Kentucky from such value mile for mile inside said State.

XI.

The District Court erred in refusing to deduct from said franchise tax valuation, which said defendants' predecessors assumed to make against plaintiff, anything on account of the excess value outside the State as compared with the value inside the State of complainant's railroad, because of the great value of complainant's terminals situated outside the State of Kentucky.

XII.

The District Court erred in holding that the assessment which the predecessors of defendants assumed to make against complainant was not assailable on the ground that the capital stock valuation which they assumed to make was apportioned to Kentucky upon the basis of the ratio of the length of lines operated, owned, and leased instead of the lines operated, owned, leased, or controlled, when the statute required such apportionment upon the ratio of the length of lines operated, owned, leased or controlled in Kentucky to such length in Kentucky and elsewhere.

XIII.

The District Court erred in refusing to apply a correction by way of deduction from the amount of the franchise assessment made by the predecessors of defendants against complainant on account of the value of securities held in the treasury of complainant in its home office outside the State of Kentucky, which securities, as complain-

ant claimed, constituted no part of the railroad system or unit distributable among the states having franchise tax valuation laws.

XIV.

The District Court erred in holding that complainant was not denied the equal protection of the laws in being assessed by said predecessors of defendants by different method from that used in the case of other persons belonging to the same class and similarly situated.

XV.

The District Court erred in holding that the assessment which the predecessors of defendants assumed to make against complainant was maintainable to the extent of one million, three hundred forty-seven thousand, two hundred and twelve ($1,347,212.00) dollars, or any other sum in addition to the assessment upon which the complainant had already paid taxes, to-wit: Six million, six hundred eighteen thousand, five hundred and eighty-five ($6,618,585.00) dollars.

XVI.

The District Court erred in not making equalization of the capital stock assessment of complainant which the said predecessors of defendants assumed to make at 52 per cent instead of 60 per cent.

b.

Defendants' assignments of error are as follows (pp. 269, 270, Rec. 642):

1. The action of the court in overruling defendants' motion to dismiss on the grounds that the District Court had no jurisdiction to hear this cause.

2. The action of the court in overruling defendants' motion to dismiss on the grounds that the bill of complaint shows no equity on its face.

3. The action of the court in overruling defendants' motion to dismiss on the grounds that plaintiff has an adequate remedy at law.

4. The action of the court in overruling defendants' motion to dismiss on the grounds that the bill states no cause of action against the defendants or either of them under the laws of this State or under the laws of the United States.

5. The action of the court in overruling defendants' motion to dismiss on the grounds that this is a suit against the State of Kentucky.

6. The action of the court in holding in the decree that plaintiff's property should not be assessed at more than 60 per cent of its fair cash value estimated at the price it would bring at a fair voluntary sale for the supposed reason or for the reason that other property in the State, or a great bulk of the other property in the State, is habitually, willfully, intentionally and systematically assessed at not more than 60 per cent of its fair cash value estimated at the price it would bring at a fair voluntary sale.

7. The action of the court in holding that other property in the State, or a great bulk of other property in the State, is habitually, intentionally and systematically assessed at not more than 60 per cent of its fair cash value estimated at the price it would bring at a fair voluntary sale.

8. The action of the court in holding that the Board of Valuation and Assessment followed a fundamentally wrong method in assessing plaintiff's property for taxation.

9. The action of the court in granting a decree enjoining the collection of taxes by the State of Kentucky and the county and taxing districts in the State, based upon an assessment greater than 60 per cent of the fair cash value of plaintiff's property estimated at the price it would bring at a fair voluntary sale.

10. The action of the court in holding any part of the assessment made by the Board of Valuation and Assessment of plaintiff's property void, and in granting a decree enjoining the collection of any part of the taxes due based upon an assessment of plaintiff's property at the sum of $27,124,240.

c.

On the 1913 assessment complainant's assignments of error are as follows (Rec. 644, p. 182, *et seq.*):

I.

The District Court erred in refusing to hold that the capital stock value of appellant did not exceed the value

of the total tangible property of appellant, and that, therefore, there was no value assessable for franchise taxation.

II.

The District Court erred in holding that the Kentucky statute, properly construed, required an apportionment of the total stock value of appellant to Kentucky, and a deduction from Kentucky's proportion thereof of the value of the tangible property of appellant in the State of Kentucky, instead of holding that the total tangible property of appellant in Kentucky and elsewhere should be first deducted from the total capital stock value of appellant before apportionment to the State of Kentucky.

III.

The District Court erred in requiring appellant to pay taxes upon a franchise valuation of six million ($6,000,000.00) dollars, or upon any other sum as a condition precedent to the court's granting to appellant the preliminary or interlocutory injunction, and in declining to grant such injunction without such payment.

IV.

The District Court erred in refusing to hold in accordance with complainant's claim that complainant was entitled to equalization at the rate of 52 percent of the fair cash value of its total capital stock apportionable to the State of Kentucky instead of an equalization at 60 per cent.

V.

The District Court erred in making equalization of the capital stock assessment of complainant (at 60 percent) upon thirty-four million, four hundred thousand ($34,400,000.00) dollars as the fair cash value of the portion of complainant's unit in Kentucky instead of the sum of twenty-three million, six hundred seventy-nine thousand, one hundred and eighty ($23,679,180.00) dollars, the latter sum being the amount which, as complainant claims, was found by the Board as the fair cash value of complainant's capital stock apportionable to Kentucky.

VI.

The District Court erred in holding that the assessment which the defendants assumed to make against the complainant was maintainable to the extent of two million, one hundred sixty-one thousand, and sixty-seven ($2,161,067) dollars, or any other sum, in addition to the assessment upon which the complainant had already paid taxes, to-wit: six million ($6,000,000) dollars.

VII.

The Court erred in holding that complainant's attack on the assessment, which defendants' predecessors assumed to make in this case, did not involve the charge of fraud, but only of a fundamentally wrong principle.

VIII.

The District Court erred in holding that said Court had no power to review the action of the predecessors of defendants in capitalizing the earnings of complainant at 6 percent instead of 7½ or 8 percent, the latter rate being as contended for by complainant indispensable to a real criterion of value inasmuch as a steady income of 6 percent could not be made without allowing 7½ or 8 percent interest or income upon the value invested in railway property because of the cost of indispensable non-income producing expenditures for betterments, improvements, and other items equaling 1½% to 2 percent of the net income of complainant and of railroad companies generally.

IX.

The District Court erred in holding that it had no power to revise or correct, vacate or modify, the action of the predecessors of defendants in arbitrarily selecting for capitalization the gross corporate income of complainant instead of complainant's net income; nor in arbitrarily selecting for capitalization complainant's income for some particular year or collection of years when the earnings of complainant happened to be especially high; nor in ignoring the amount of complainant's net income for the current year in selecting years' incomes for capitalization; nor in selecting for capitalization the so-called Kentucky earnings of complainant instead of the earnings of complainant's entire railway system which the statutes of Kentucky required

said predecessors of defendants to consider; nor in arbitrarily valuing the bonds issued by complainant at par when said bonds did not exceed in value more than four-fifths thereof; nor in taking the highest price brought upon the stock market by the capital stock of complainant instead of the average price.

X.

The District Court erred in holding that it had no power to correct the mistakes made by said predecessors of the defendants, if their acts resulted from mistakes, in selecting for capitalization the wrong items as income; nor in fixing at par the value of bonds bearing such a rate of interest as showed them worth far less.

XI.

The District Court erred in refusing to make any deduction from the franchise tax valuation which defendants assumed to make against complainant on account of the excess value mile for mile of complainant's railroad outside the State of Kentucky over such value mile for mile inside said State.

XII.

The District Court erred in refusing to deduct from said franchise tax valuation which said defendants' predecessors assumed to make against plaintiff anything on account of the excess value outside the State as compared with the value inside the State of complainant's railroad

because of the great value of complainant's terminals situated outside the State of Kentucky.

XIII.

The District Court erred in holding that the assessment which the predecessors of defendants assumed to make against complainant was not assailable on the ground that the capital stock valuation which they assumed to make was apportioned to Kentucky upon the basis of the ratio of the length of lines operated, owned, and leased, instead of the lines operated, owned, leased, or controlled, when the statute required such apportionment upon the ratio of the length of lines operated, owned, leased or controlled in Kentucky to such length in Kentucky and elsewhere.

XIV.

The District Court erred in refusing to apply a correction by way of deduction from the amount of the franchise assessment made by the predecessors of defendants against complainant on account of the value of securities held in the treasury of complainant in its home office outside the State of Kentucky, which securities, as complainant claimed, constituted no part of the railroad system or unit distributable among the states having franchise tax valuation laws.

XV.

The District Court erred in holding that complainant was not denied the equal protection of the laws in being assessed by said predecessors of defendants by a differ-

ent method from that used in the case of other persons belonging to the same class and similarly situated.

XVI.

The District Court erred in not making equalization of the capital stock assessment of complainant which the said predecessors of defendants assumed to make at 52 percent instead of 60 percent.

d.

On the 1913 assessment defendants' assignments of error are as follows (Rec. 644, p. 187):

1. The action of the court in overruling defendants' motion to dismiss on the grounds that the District Court had no jurisdiction to hear this cause.

2. The action of the court in overruling defendants' motion to dismiss on the grounds that the bill of complaint shows no equity on its face.

3. The action of the court in overruling defendants' motion to dismiss on the grounds that plaintiff has an adequate remedy at law.

4. The action of the court in overruling defendants' motion to dismiss on the grounds that the bill states no cause of action against the defendants or either of them under the laws of this State or under the laws of the United States.

5. The action of the court in overruling defendants' motion to dismiss on the grounds that this is a suit against the State of Kentucky.

6. The action of the court in holding in the decree that plaintiff's property should not be assessed at more

than 60 per cent of its fair cash value estimated at the price it would bring at a fair voluntary sale for the supposed reason or for the reason that other property in the State, or a great bulk of the other property in the State, is habitually, willfully, intentionally and systematically assessed at not more than 60 per cent of its fair cash value estimated at the price it would bring at a fair voluntary sale.

7. The action of the court in holding that other property in the state, or a great bulk of other property in the State, is habitually, intentionally and systematically assessed at not more than 60 per cent of its fair cash value estimated at the price it would bring at a fair voluntary sale.

8. The action of the court in holding that the Board of Valuation and Assessment followed a fundamentally wrong method in assessing plaintiff's property for taxation.

9. The action of the court in granting a decree enjoining the collection of taxes by the State of Kentucky and the county and taxing districts in the State, based upon an assessment greater than 60 per cent of the fair cash value of plaintiff's property estimated at the price it would bring at a fair voluntary sale.

10. The action of the court in holding any part of the assessment made by the Board of Valuation and Assessment of plaintiff's property void, and in granting a decree enjoining the collection of any part of the taxes due based upon an assessment of plaintiff's property at the sum of $23,679,180.

THE FACTS.

The facts, briefly summarized, are:

That complainant is an Illinois corporation, and defendants at the times in question constituted the Kentucky Board of Valuation and Assessment, intrusted with the franchise tax assessment of corporations (Ky. Stats., Sec. 4077, *et seq.*). The amount in controversy in each case greatly exceeds $3,000.00 exclusive of interest and costs.

The case on the 1912 assessment.

The bill in cases 642, 643 (on 1912 assessment), showed (5-6) that complainant operated a system of interstate railroads extending through the State of Kentucky and ten other states, 3,986.75 miles, of which 563.79 miles were in Kentucky; that complainant duly made and delivered to the State Auditor of Kentucky a verified statement, as required by Sec. 4078, Kentucky Statutes, showing the following items:

	I. C. System	Kentucky
Operating revenue	$60,977,031.49	$7,622,738.49
Operating expenses	43,856,228.13	5,068,952.56
Net operating revenue	17,120,803.36	2,553,785.93
Total net revenue	17,064,339.12	2,552,922.14
Taxes	2,671,290.22	225,153.72
Operating income	14,393,048.90	2,327,768.42
Other income	6,742,438.50	85,260.18
Gross corporate income	21,135,487.40	2,413,028.60
Rents accrued for lease of other roads	3,748,071.01	12,039.70
Other rents	531,720.03	278,018.83
Net corporate income	11,315,343.92	1,225,291.79

The most significant item in this table is "Other Income" (other than operating), amounting to $6,742,438.50, as hereinafter noted.

The statement showed that complainant owns tangible and intangible property outside the State (6). On April 12, 1912, the defendants made a preliminary assessment of complainant's franchises in Kentucky at $21,500,000, as follows (7):

Capital stock	$33,877,383.00
Less tangible assessment	12,377,383.00
Remainder, franchise assessment.	21,500,000.00

The capital stock assessment was arbitrary as appears by the *round* figures added to the tangible assessment to produce it.

Complainant's bill averred the market value of the capital stock and funded debt of the system not held in the Company's treasury, based upon the *highest* quotations during the year 1911, to be $306,934,100.00, and the value of the tangible property of the entire system outside Kentucky to be not less than $320,000,000—showing that there could be no balance for franchise value—and that the net income of the Company, as an operating Company, capitalized at 5 per cent amounted to $315,155,351; at 6 per cent, $262,629,457, and at 7 per cent $225,110,965 (7). Of course, 5 per cent capitalization was inadmissible, and it was never used by the defendants.

The bill showed that the franchise assessments in Kentucky for the four next previous years were, for 1908, $4,517,940; for 1909, $4,509,680; for 1910, $4,228,425, and for 1911, $4,510,320, and that the value of such franchise

in Kentucky was no greater for 1912 than in the previous years, and that the final assessment by the defendants for 1912 at $14,746,857 was made without reference to real value. The companion railroads were assessed for 1911 and 1912 as follows: Lou. & Nash. R. R. Co., 1911, $11,899,200, for 1912, $45,428,070; Ches. & Ohio R'y Co., for 1911, $2,745,350, for 1912, $18,798,630, and the Cin., N. O. & T. P. R'y Co., for 1911, $3,559,320, and for 1912, $10,674,200.

The bill showed that defendants had, in making the assessment, ignored statutory requirements and taken the so-called *Kentucky Earnings* of complainant for the year ended June 30, 1911, and for the year ended June 30, 1910, and averaged them, and capitalized the result at 6 per cent, and taken 80 per cent thereof as the capital stock assessment, although real estate in Kentucky was generally, systematically, intentionally and habitually assessed at not more than *60 per cent* of the fair cash value, so that the assessment was arbitrary and without reference to value, denying to complainant the equal protection of the laws, and taking its property without due process of law in violation of the Fourteenth Amendment (10).

The bill claimed that if the total tangible property of the system had been deducted from the total stock value, even computed at highest market price, no remainder would have resulted for assessment (11); and that unless defendants were enjoined from apportioning the amount of the assessment to the divers counties, cities, towns and taxing districts, and the public prosecutors likewise en-

joined from instituting criminal proceedings, multitudinous indictments and penal actions would immediately result, and that suits for enforcement of liens casting clouds upon complainant's title would be instituted so that its remedy at law was inadequate and an injunction its only sufficient protection (12-14). Attached to the bill were statements of problems indicating the highest amounts which could be, by any recognized method, assessed against complainant.

As will appear hereafter, the so-called *Kentucky Earnings* were simply the *intrastate earnings* and a mileage proportion, computed on arbitrary distances, of the *interstate earnings* (the former comprising only 23.46 per cent of the whole), so that the adoption of the Kentucky earnings involved the assessment in Kentucky of an excess value mile for mile outside Kentucky of complainant's railroad *consisting largely of its immense terminals in Chicago, New Orleans, Memphis and East St. Louis* (74).

Defendants filed affidavits upon the motion (33, 39, 43, 63) and afterward filed an answer (93); and in his second affidavit (63) defendant, Bosworth, undertook to explain the assessment made by defendants and showed that nothing was allowed on account of complainant's excess value mile for mile of its railroad outside the State, but that its railroad was treated as of the same value in and outside Kentucky, the reason given being that the *Kentucky earnings* bore virtually the same ratio to the *system earnings* as the *Kentucky mileage* bore to *system mileage*—a fallacy herein elsewhere exploded.

By amendment to the bill filed (p. 70) November 12, 1913, complainant averred that property in Kentucky was assessed at not exceeding *48.3 per cent* of its fair cash value as shown by the Federal Census (figures p. 72).

Defendants declared *lack of information*, and thereupon denied the assessment of other property in Kentucky at 48.3, and the general, systematic, intentional and habitual assessment at such figure (105)—*a denial inadmissible to persons of presumptive knowledge.*

Defendants introduced in evidence the bill of complaint filed by complainant in July, 1906, versus Chas. C. McChord, *et al.*, composing the Kentucky Railroad Commission (213 U. S. 199), to enjoin the enforcement of rates fixed by them, in which complainant alleged as the value of its railroad, etc., in Kentucky, $26,000,000 (74) and receipts from intrastate business only *23.46 per cent* of the entire receipts, including interstate commerce also (74). They also introduced the amended bill in said suit, wherein the railroad and equipment valued at $26,000,000 was raised to $28,768,276 (86). [The latter sum was shown by Tax Commissioner Tarbet (214) to contain $2,000,000 for rolling stock and over $4,000,000 for franchise value, leaving only twenty-two million and odd.]

In its opinion (90) the Court, November 12, 1913, repudiated the method of franchise assessment expounded by the United States Circuit Court of Appeals (Lurton, J.) in *Coulter* v. *Weir*, 127 Fed. 897, and refused to follow its ruling that from the *total stock value of the system* must *first* be deducted the *total system tangible property* and the residue apportioned upon a mileage basis.

Also, the Court granted the injunction upon a 70 percent assessment basis, $6,618,585.

The answer of defendants (93) was principally a general denial of the averments of the bill. They conceded that they had not *first* valued capital stock and then deducted the value of the *tangible property of the system* and apportioned the residue (100). *They asserted the illegality of assessing complainant's property at less than full value*, however property generally might be assessed; and that had defendants intentionally assessed it for less than real value they would be liable to indictment and heavy penalties (101). They averred that some of the railway companies "failed to report to the Auditor the gross and net earnings derived by said Companies in Kentucky" (103)—the other Companies not so reporting must have been assessed by different method, therefore, from that employed in assessing complainant, as the latter was assessed upon the Kentucky earnings (Tarbet,). The defendants impliedly admitted that they had made no allowance, in making their assessment, for any excess value mile for mile of complainant's railroad outside Kentucky (104), for they capitalized $2,413,028.00 *as Kentucky earnings, a strict mileage proportion of complainant's gross corporate income* (see p. 94).

Although such capitalization produced $38,779,400.00, the defendants (105) "to the end that no injustice might be done complainant, by the Board overvaluing its franchise for taxation, * * * fixed and determined the value of that part or proportion of the capital stock of complainant in Kentucky at $27,124,240."

By amended bill, April 16, 1914, complainant alleged (107) that the assessment aforesaid included stocks, bonds, cash, notes, advances, etc., "in value $54,300,746.49 none of which was ever in Kentucky or had any situs there," etc., and asserted that their assessment deprived complainant of property without due process of law.

It also averred that in employing the stock and bond plan of assessment defendants had used *the highest market price* during the year, instead of the *average price* at which any of the shares were sold; and assessed the funded debt *at par,* instead of its *real value,* whereby complainant had been over-assessed in the sum of $10,684,581.00; and that in employing the net earnings method of assessment defendants had by mistake capitalized complainant's "*gross corporate income*" instead of capitalizing, as would have been proper, the "*operating income*" plus such part of complainant's "other income" (94) as was derived from railroad operations minus other rents, whereby a mistake against complainant was made of $72,659,700.00.

In their answer defendants made denial of the inclusion of the aforesaid $54,300,746.49 foreign securities and of including excess value mile for mile of tangible property outside the State—denying that complainant's property was "of much greater value, mile for mile, acre for acre, outside of the State of Kentucky, than is the value of complainant's property in the State of Kentucky" (110). They also denied the mistakes alleged as aforesaid (111).

Complainant proved by Mr. Lamb (121) that the ratio of assessment of other property in Kentucky according to the Federal Census Reports, and other official documents, was not over 50 per cent of real value, and the standard employed by the State Board of Equalization not over 52 per cent (122-124); and that defendants themselves had assessed franchises of such corporations as the *Cumb. Pipe Line, Louisville Gas Co., Pullman Co., Ky. Traction and Terminal Co.,* at low sums, upon the basis of returns, which, if the same methods had been used as in case of complainant's assessments would have led to similar enormous assessments for franchise values, and that the absence of such values showed that different methods had been used (126-130).

Other evidence showed (134) that the earnings in any state were increased by the terminals and other facilities existing in other states, and that terminals are the most expensive railroad property, and that the convenience afforded the public by them contributes greatly to earnings from traffic (133). That the situation of Kentucky was such that the through business of complainant was originated by lines and terminals in other states and passed through Kentucky, notable instances of such traffic being great quantities of cotton, lumber, pig-iron, pipe, cottonseed products, sugar, bananas, coffee, sisal, grain and grain products, and other imported freight, and that such traffic was due to the great *terminals of complainant at New Orleans, Memphis, Chicago, East St. Louis and Omaha;* that the *Kentucky terminals* were comparatively insignificant, and contributed a comparatively small

amount of traffic, wherefore the earnings in Kentucky were augmented by the important terminals in other States (134) and that in pro-rating to Kentucky the amount of such earnings no allowance was made for terminal charges (135).

On final submission the court delivered an opinion (160, also 209 Fed. 465) that complainant was entitled to 60 per cent equalization, but that the assessment, $27,124,240, was only 80 per cent of full value, $33,905,300, so the Court reduced the assessment to $20,343,180; deducted tangible assessment at $12,377,383, leaving $7,965,797, being $1,347,212 more than the sum paid as condition of preliminary injunction. Complainant petitioned for rehearing or modification (162-177); and with it tendered affidavits showing values upon the greater system of complainant's railways, including *controlled* lines. The petition was overruled June 28, 1916, and proposed decree (181) in conformity with the petition rejected, and final decree entered (183).

On December 31, 1915, complainant had filed supplemental bill (177) making parties to the suit, Robert L. Greene, Auditor, Sherman Goodpaster, Treasurer, and Jas. P. Lewis, Secretary, as they were the successors to Bosworth, Rhea and Crecelius; and making parties the successors to the other defendants. An order was made accordingly, by consent (175). On June 28, 1916, a stipulation curtailing the record was made (192) and an agreed bill of evidence was signed (192-265); with exhibits (265, *et seq.*).

In the petition for rehearing (162) complainant attacked the Court's rulings (160, 161), and, also, insisted that as the Court had found that defendants "did not arrive at their (assessment) by the statutory method" (161) a new assessment should be accorded complainant; and contended that inasmuch as the Court declined to eliminate from taxation the treasury securities aforesaid, the Court should treat such of them as represented "controlled lines" as a part of the stocks and bonds evidencing value of the system taxed and compute Kentucky's mileage proportion accordingly. Complainant, therefore, filed affidavits with its petition, showing what an assessment including the controlled mileage would yield (168, *et seq.*). The evidence in Rec. 642 was by stipulation read in Rec. 644 and *vice versa*, and will be mentioned later.

The Case on the 1913 Assessment.

In Cases 644 and 645 the bill filed June 31, 1914, between same parties, and seeking similar relief, showed system mileage 4,550.54, and Kentucky mileage 563.79 that complainant had made report under Sec. 4078; that defendants had made preliminary and final assessments, the latter for $11,200,277 as *supra* (5).

The bill averred the ratio of assessed to true value of property generally in Kentucky to be only 50 per cent; that in making its assessment defendants arbitrarily ignored the net income of plaintiff for the current year, and the excess value of its tangible property mile for mile outside the State over that inside, and refused to

eliminate the value of treasury securities $55,874,755.75 (8); that the defendants had made mistakes in computations in valuing bonds of complainant *at par* when their real value was much less, viz., by a sum aggregating $43,310,120 less than the sum adopted by defendants; that in computing the value upon the earnings basis defendants by mistake had capitalized the *gross corporate income* instead of the *operating income* of complainant, thereby including in the sum capitalized interest on treasury securities and other items not relating to transportation; and had arbitrarily selected as a basis for capitalization the income for years when complainant's income was unusually large, and ignored the *current* year when the income was small; and that capitalization was made at 6 *per cent* which was too low (9). The bill showed the reproduction cost of complainant's terminals in Chicago, New Orleans, and Memphis to exceed $136,000,000, and that there were no terminals in Kentucky of corresponding value or importance (10). It showed, as did the previous bill, the valuations for previous years (11).

Ex. B, part of Ex. Y, (15-18, 20-22 and 24-27), showed methods for computing franchise values.

The defendants' explanation of their computations appears as Ex. E—part of Ex. Y, with bill (27, *et seq.*) and complainant's report to auditor appears, 34-46.

N. B. Defendants stated (30) that complainant failed to give "a list of the stocks, bonds and notes, or describe the miscellaneous properties which respondent holds as investments, and which are not used in its business, and thus enable the Board to investigate and determine their

value''; and the Court repeats the error (170), saying, ''It (complainant) made no showing of the real value of this property or gave an itemized list thereof so that the Board might make an examination as to the value thereof''. Both defendants and the Court evidently overlooked the elaborate list, Table 5 (44).

Defendants' computations will be considered in the argument.

Defendants' answer, speaking generally, consisted of a general denial (55) and an admission that no evidence was considered except that produced by complainant in affidavits and exhibits (56); and of a protest that the State Constitution required all the property assessed at full value (59).

By amended bill April 16, 1914 (68) complainant showed that in defendants' computation they had by mistake, made an over-estimate by $18,466,541, in using the *highest* market price during the year instead of the *average* price, and the *par* value of bonds instead of *real* value; and by mistake made an error of $63,417,645 in capitalizing *gross corporate income* instead of *income from operation;* also, that they had erred in capitalizing income at 6 per cent instead of 8 per cent, which was proper because of increase in cost of wages, supplies, of increased taxes, of full crews and Workman's Compensation Laws, and outlays for depots, expensive crossings, and other things not increasing revenues. Defendants traversed these allegations (70).

The cases were consolidated and the affidavits, treated by stipulation as depositions, and other evidence, were by agreement read in both cases (69, 71-73, 101).

Some of the affidavits, treated as depositions, are duplicated; see Rec. 642, pp. 121-131, and Rec. 644, pp. 81-91, but the principal testimony, including all the oral testimony, although read in both cases, is found in Rec. 642; see especially p. 193, *et seq.*

Mr. Longstreet (92) shows that great quantities of traffic passed through Kentucky originating at complainant's terminals outside the State, and that none of the important terminals is located in Kentucky, the Louisville terminal being unimportant as compared with those at Chicago, New Orleans and Memphis.

Defendant Bosworth (113) swore that defendants had allowed nothing for excess mileage of complainant's railroad outside Kentucky.

The Court having at the hearing of oral testimony suggested doubts as to the propriety of eliminating from the assessment some of the treasury securities in controversy, Comp. Blauvelt carefully removed all securities *about which any question could exist*, and even set apart a large part of the cash as assessable as incidental to railroad operation (Rec. 642, 151, *et seq.*; Rec. 644, 133, *et seq.*, duplicated) showing in Ex. A the items remaining, and in Ex. B those eliminated. Of the stocks in Ex. A there were such large items as

Chicago Union Transf. R'y Co.	$ 40,000.00	
Cent. of Ga. R'y Co.	3,474,249.02	
Ind. Sou. R. R. Co.	128,998.95	
Miss. Valley Co.	43,125.00	
and such smaller ones as		
Jackson Realty Co., Ltd.,	5,000.00	
Auditorium Co.	1,000.00	
Comm. Trust Co.	7,000.00	
	etc., etc.	
Total		$ 3,712,291.07
Of the bonds were Indianapolis Southern	8,777,289.86	
Yazoo & Miss. Valley R. R. Co. bonds of 1952,	2,324,488.18	
other bonds and scrip,	5,911,710.07	
Tenn. Central R. R.	1,338,000.00	
Homewood Country Club	2,400.00	
	etc., etc.	
Total		$19,110,388.11
Cash proceeds of sale of bonds	10,406,700.00	
Notes	562,119.85	
Advances	8,635,935.41	
Miscellaneous	608,659.81	
Accounts	56,141.73	
	etc., etc.	
Grand total		$43,092,235.00

The eliminated items (Ex. B) were traffic balances $73,452.10, etc., including cash $4,616,417.80, grand total $7,466,764.38. The miscellaneous properties in Exhibit A ($608,659.81), even included real estate outside Ken-

tucky not connected with the railroad operation (Rec. 642, p. 154). A petition for rehearing (Rec. 644, p. 147) was filed and overruled (Opin. 166, Decree 174).

The petition challenged the decision, and also prayed in the alternative an assessment upon the basis of the greater system including controlled mileage operated autonomously represented by the taxed securities.

Statistician Hanagan testified (Rec. 642, p. 173) that the intrastate and interstate commerce for Kentucky for year ended June 30, 1905, was 23.04 per cent intrastate and 76.96 per cent interstate; for year ended June 30, 1906, 24.24 per cent intrastate, 75.76 per cent interstate; for eight months ended Feb. 28, 1907, 24.88 per cent intrastate, and 75.12 per cent interstate, etc.; and that the statistics for years ended June 30, 1911 and 1912 were similarly computed and substantially the same as during 1905, 1906 and 1907.

The system mileage, including the controlled mileage, was 8,042.75, and the mileage in Kentucky 561.92, ratio 6.99 per cent (174); and excluding trackage rights of other lines, system 7,862.93, and Kentucky 560.49, ratio 7.13 per cent.

The Court in the 1912 Case (Rec. 642, pp. 160, 181, 183) rejected a tendered decree for reassessment upon the larger system of railways and ordered payment upon an additional assessment of $1,347,212 in addition to the payment upon the original assessment as condition to preliminary injunction of $6,618,585, and in the 1913 Case (Rec. 644, pp. 142, 166, 174) required payment upon an

assessment of $2,161,067 in addition to the payment upon $6,000,000 assessment as condition to preliminary injunction. The interlocutory injunctions were continued pending appeals to this Court (Rec. 642, p. 185; Rec. 644, p. 176).

The evidence, in the main, is so fully discussed in the argument that little of it need be noticed here (Rec. 642, p. 193).

Valuation Engineer Brumley testified that the reproduction cost, less depreciation, of complainant's lines in Kentucky for fiscal year ended June 30, 1911, was $24,156,803, while that of the system was $319,683,045 (equivalent to $70,252 per mile), and that of a Kentucky mile was only 60.8 per cent of the system mile, the difference being due principally to reproduction cost of the great terminals outside Kentucky (194); that the reproduction cost of the Louisville terminals, the only large ones in Kentucky, was $3,622,400, that of Chicago's was $120,660,000, that of East St. Louis's was $3,400,000, that of Memphis's $8,315,000, and that of New Orleans's $9,189,000; and that eliminating the value of terminals both inside and outside Kentucky such cost of the mileage outside approximated $1,000 *per* mile in excess of that inside Kentucky (194, 195).

Comptroller Blauvelt explained the so-called "Kentucky earnings" and "Kentucky net earnings" mentioned in reports to the State Auditor as consisting, first, of intrastate earnings and, secondly, interstate earnings of traffic originating within the State and destined to points outside and *vice versa*, this through interstate

traffic being for the purpose of the estimate divided on a straight mileage basis pro rata, with a minimum of twenty-five miles in some cases and fifty miles in others (196), and said that no allowance was made on account of the use of terminals, a method operating to Kentucky's advantage (197).

He explained that the capitalization of the "gross corporate income" (Report to Auditor June 30, 1911, and June 30, 1912) did not produce a correct valuation because such income included "income from securities which was not income from railroad operations." He explained the *criterion* for the 1912 assessment to be "operating income $14,393,048.90, plus $1,836,853.25 accruing as a railroad proposition" composed of equipment hire, rent of joint facilities received by complainant, *minus* $531,720.03 being largely rents paid by complainant to other Companies; and that the *criterion* for the 1913 assessment was $8,416,808.65 composed of operating income, $7,812,718.60, plus $1,361,568.25 other income less deductions for rents, etc., paid $757,478.20. [The gross corporate income capitalized by defendants for 1912 was $21,135,487.40 (or $2,413,028.60 "Kentucky earnings") and for 1913, $18,093,300; see Rec. 642, p. 18, Rec. 644, p. 32.]

Comptroller Blauvelt explained that about 2 *per cent per annum* upon valuation was necessary to take care of improvements, etc., not increasing revenue, so that capitalization at 8 per cent was necessary to insure a return on capital of 6 per cent (198). He testified that it was impossible from the Balance Sheet

to determine the value of railroad properties, valuation not being its purpose (203).

Tax Commissioner Tarbet testified (206) that to use properly earnings for capitalization it was necessary to employ an average of five years, because of fluctuations of earnings from year to year (206); that a railroad was not worth its reproduction cost, but that such cost was an accurate index to *relative values* of properties inside and outside the State; that such cost had no relation to taxable value however pertinent to the question of rate-making (211); that good terminals in a big system would cost about one-third the cost of the entire system (213); that the values mentioned in the bill and amended bill in the Siler Case included $2,000,000.00 for rolling stock and $4,000,000.00 for franchise, thus leaving a balance of over $22,000,000.00 for physical property; that terminals were indispensable to procure earnings (215).

The witness gave also an elaborate exemplification of the results obtained by the use of correct methods of taxation and the use of official statistics. (Rec. 642, pp. 206-214.)

The large amount of testimony greatly condensed and concerning principally the question of equalization appears, Rec. 642, pp. 215-269.

ARGUMENT.

From the Assignments of Error, *supra,* it appears that there are several general questions applicable to the litigation on both years, *viz.,* (a) the jurisdiction of the District Court, including the effect of the Eleventh Amendment and equitable jurisdiction of the court and adequacy of the legal remedy; (b) the right of complainant to require deduction of its treasury securities from the total capital stock valuation before apportionment to Kentucky; (c) the similar right to a correction, or deduction, by reason of the excess value mile for mile of complainant's lines of railroad outside the State; (d) the right of complainant to be equalized with other property assessed in the State; (e) the right of defendants in making their assessment of complainant's capital stock to adopt the highest market price of the stock at any time during the current year and par value of bonds rather than real value; (f) to capitalize the "*gross corporate income*" of complainant instead of the *net income from operation;* (g) the right to capitalize at 6 per cent when a return of 7.5 per cent or 8 per cent is necessary to produce 6 per cent steady income or return, and matters incidentally referred to.

The questions of jurisdiction aforesaid, and of complainant's right to equalization were decided in complainant's favor and are raised by defendants' Assignments of Error Nos. 1, 2, 3, 5, 6, 7, 9, Rec. 642, p. 270, and similar Assignments, Rec. 644, pp. 187, 188; and the other questions mooted *supra* are raised by complainant's Assignments of Error I, II, X, XI, XII, V, VI, VII, etc.

I.

Jurisdiction of the District Court, and the Eleventh Amendment.

The question of jurisdiction of the District Court, including the application of the Eleventh Amendment, was so thoroughly threshed out in the District Court, and that court's opinion is so conclusive, that further argument seems inadmissible, except to add reference to later cases; 209 Fed. Rep., 385 to 406, inclusive.

The later cases on the Eleventh Amendment, decisive of the *instant* question, are:

Home Tel. & Tel. Co. v. *Los Angeles*, 227 U. S. 278.
Ohio Tax Cases, 232 U. S. 576, 586.
Truax v. *Raich*, 239 U. S. 33, 37.
Johnson v. *Wells Fargo & Co.*, 239 U. S. 234.
Nevada, etc., Co. v. *Hamilton*, 235 Fed. 317, 321, 338, 342.

On the question of equity involved in this point it sufficeth to cite *Kentucky Statutes*, Section 4021, creating a lien for taxes upon complainant's railroads;

Ches., O. & S. W. R. R. Co. v. *Com.*, 129 Ky. 318, 108 S. W. 248.
Railroad Tax Cases, 92 U. S. 575 (23 L. Ed. 663).
Ohio Tax Cases, supra.
Johnson v. *Wells Fargo & Co.*, 239 U. S. 234.
Nevada, etc., Co. v. *Hamilton*, 235 Fed. 317, 321, 338, 342.

In the Ohio case, 232 U. S. 57, this Court said:

"The right to invoke the equity jurisdiction is clear for the Act specifically makes the tax a lien

upon the real estate of appellants, from the cloud of which they sought to free it by the bringing of these actions (§117 of Act; §5506, Gen. Code); and the bills alleged threatened irreparable injury from the enforcement of the penalties and coercive features of the Act. *Shelton* v. *Platt*, 139 U. S. 591, 598; *Ex parte Young*, 209 U. S. 123."

See also averments of bills, Rec. 642, pp. 11-13; Rec. 644, 11, *et seq.*

II.

Wrongful Assessment of Treasury Securities Outside the State.

It appears that Auditor Bosworth, Treasurer Rhea and Secretary of State Crecelius, constituting the new Board (January, 1912), found a large deficit in the State treasury; that they permitted a private citizen, Justus Goebel, desperately hostile to the Railroad Companies, to sit with them for five months while making the assessments of the franchises of the large public service corporations, and that, in addition to considerable increases in the assessments of the large corporations, they raised the franchise assessments of the *four principal Railroad Companies* enormously, *e. g.*, the Louisville & Nashville R. R. Co. from $11,899,200 for 1911 to $45,428,074 for 1912; the Chesapeake & Ohio R. Co. from $2,745,350 for 1911 to $18,798,630 for 1912; the Cin., N. O. & Tex. Pac. R. Co. from $3,559,320 for 1911 to $10,674,206 for 1912, and the I. C. R. R. Co. from $4,510,320 for 1911 to $14,746,857 for 1912—*thus assessing the franchise much more than the tangible property which was assessed only*

$12,377,383—(Rec. 642, p. 9), (and that the predecessors of said officers had assessed the franchises of complainant at $4,510,320 for 1911, $4,228,425 for 1910, $4,509,680 for 1909, and $4,517,940 for 1908), while private property of individuals in the State was being assessed at *about half its value* (Rec. 642, p. 223); and the State Board of Equalization of which Auditor Bosworth was Chairman, sitting concurrently with the Franchise Tax Board, had raised the aggregate assessment made by the county assessors only 3.7 per cent for the year 1912 and only 1.9 per cent for the year 1913 (Rec. 642, pp. 220, 222). So that complainant, no matter what the motives of the members of the Board, was denied the equal protection of the laws.

Various conflicting explanations of the methods employed were given by the defendants, as we shall hereafter indicate, but enough appears to show (1) that all complainant's investment securities in its treasury in Chicago were included in the sum assessed as the value of its capital stock apportioned *pro-rata* to Kentucky; (2) that the excess value mile for mile of the Company's lines outside the State, consisting principally in large terminals at Chicago, New Orleans, Memphis and elsewhere, was not eliminated before apportionment to Kentucky; (3) that complainant was denied equalization such as to put it on equality with other taxpayers; (4) that when earnings were capitalized as an index to value 6 per cent was used as the rate, instead of 7½ or 8 per cent, the proper rate; (5) that when the stocks and bonds were used as an index, the highest market price, instead

of the average market price during the year, was adopted; (6) that in capitalizing the earnings the "GROSS CORPORATE INCOME" instead of the net "OPERATING INCOME" was used, although including income not from railroad operation, but from investments in the Company's treasury; and otherwise the assessors arbitrarily increased the assessment of this complainant's property.

The opinion of the District Court was that its power was confined to eliminating from the capital stock assessment the treasury securities, if any, held outside the State if such investments were within the principle which the Court deduced, inaccurately as we conceive, from *Fargo* v. *Hart*, 193 U. S. 490, and *Coulter* v. *Weir*, 127 Fed. 897; to eliminating the excess value mile for mile, if any, of the Company's tangible property outside the State, and to granting equalization of the assessment with that of other property in order to insure the equal protection of the laws. But the Court held (Rec. 644, p. 166, *et seq.*) that complainant was not in fact entitled to any deduction for the value of its securities held as investments at its home office in Chicago, nor for such excess value mile for mile of its railroad outside the State; and held that the court had no power to disturb the defendants' finding of values, whether they took the highest market price within the year or the average market price of stocks and bonds; whether they capitalized earnings at 6 per cent, 7½ per cent or 8 per cent; whether they took for capitalization one year's earnings or the average of any number of years' earnings, nor, in short, whatever method they adopted for determining values

unless it involved the deprivation of the Company of its aforesaid constitutional rights.

It seems convenient, therefore, to discuss (1) complainant's right to the deduction of the value of its treasury securities aforesaid before apportionment of any part of its capital stock valuation to Kentucky; (2) the proposition that either the method required by the decision in *Coulter* v. *Weir, supra, viz.*, that from the total capital stock value the total tangible property value of the Company *inside and outside the State* be deducted before the apportionment to the States respectively of any part of the residue or that in some other equally indubitable manner the excess value mile for mile of the Company's tangible property be ascertained and deducted before apportionment to the States of the capital stock value; (3) complainant's right to equalization; (4) the proposition that the Court can and should interfere where defendants adopt a fundamentally wrong method of making their assessments, as in taking the highest market price during the past year as a criterion of value, instead of the average market price for the year, and in capitalizing the wrong amounts as earnings. Defendants, by mistake, capitalized the *gross corporate income* instead of the *income from operation*, thereby including the earnings of the treasury securities having their *situs* outside the State.

The defendants denied complainant due process of law in assessing in Kentucky a percentage based upon a mileage prorate of the income from the Company's investment securities in its treasury in Chicago. Such

securities had their *situs* at the home office of the Company in Chicago, they were in its Treasury there, and neither Kentucky nor any other outside state had any right to tax them or any per cent of them. Taxation of them by Kentucky, or by Kentucky and the other states through which the Company's railroads extend, would not diminish an iota the right of the State of the home office to tax such securities to their full value, for their *situs* is there (Coe v. Errol, 116 U. S. 517). Our position is sustained to its full extent by the decision of this Court in *Fargo* v. *Hart*, 193 U. S. 490 (Mar. 21, 1904), and of the Circuit Court of Appeals in *Coulter* v. *Weir*, 127 Fed. 897 (Feb. 13, 1904, Opinion by Lurton, J.).

In *Fargo* v. *Hart*, where the question involved was the right of the Express Company to exempt from taxation its investment securities in its treasury in New York, this Court said (p. 498):

> "We come, then, to the real question of the case: whether, the tax provided for by the statute being a tax on property, it sufficiently appears that the board took into account property, which it had no right to take into account in fixing the assessment at the large sum which we have mentioned. We already have stated reasons for assuming that the personal property in New York did enter into the valuation. * * * The ground taken before the board, and insisted on in argument before us, was that the property ought to enter into the valuation, because wherever situated it was used in the business; if not otherwise, at least as giving the credit necessary for carrying the business on. We shall assume that the question before us is narrowed to whether that ground can be maintained. The pleadings and proceedings leave no

alternative open, and no other could be pressed consistently with the candor to be expected from the officers of a State, in face of a constitutional question and dealing with great affairs. For present purposes it does not matter whether the sum taken for division on a mileage proportion was reached by taking the value of the stock or the value of the tangible assets of the company."

Again this court said (p. 499):

"It is obvious however, that this notion of organic unity may be made a means of unlawfully taxing the privilege, or property outside the State, under the name of enhanced value or good will, if it is not closely confined to its true meaning. So long as it fairly may be assumed that the different parts of a line are about equal in value a division by mileage is justifiable. But it is recognized in the cases that if for instance a railroad company had terminals in one State equal in value to all the rest of the line through another, the latter State could not make use of the unity of the road to equalize the value of every mile. That would be taxing property outside of the State under a pretense. (Citing authorities.)

"The same principle applies to personal property which the State would not have the right to tax directly. (Citing authorities.) * * * (p. 502.) Assume that something is to be added to the good will of a company because it is safe, and that the good will, or a part of it, of the express business in Indiana may be considered in assessing its property there, this is very different from measuring the good will by the capital, when the facts appear as they do in this case. The difference is not a mere difference in valuation, it is a difference in principle, and in our opinion the principle adopted by the Board was wrong. It involved an attempt to tax property beyond the jurisdiction of the State, and to throw an unconstitutional burden on commerce among the States."

In *Coulter* v. *Weir*, 127 Fed. 897, a case from Kentucky, the Circuit Court of Appeals, about a month previously to *Fargo* v. *Hart*, reached the same conclusion. The Court in its opinion (by Lurton, J.) reviewed some of the same decisions of this Court which had been invoked in *Fargo* v. *Hart*, and we rely upon these two decisions as exactly in point, and conclusive in our favor of our right to have the State Assessors deduct from the total valuation of this Company's capital stock the value of its investments of its surplus earnings held in its Treasury at its home office in Chicago. These cases really, however, but apply the familiar principle of *State Tax on Foreign-held Bonds*, 15 Wall. 300; *Wheeler* v. *Sohmer*, 233 U. S. 434, and *Frankfort* v *Fidelity, Etc., Co.*, 111 Ky. 667; *Com.* v. *Consol'd, Etc., Co.*, 170 Ky. 103, 185 S. W. 508; *Com.* v. *Northwest. Ins. Co.*, 107 S. W. 233, s. c. 32 Ky. L. R. 796; *Hurst* v. *Flemingsburg*, 172 Ky. 127, and cases cited; *Welch* v. *Burrill* (Mass.), 111 N. E. Rep. 774; *State* v. *Lewis* (Mo.), 165 S. W. Rep. 319, 325.

The District Court decided this question adversely to us upon the grounds thus indicated. It said (Rec. 644, p. 145):

> "There are, however, two particulars in which the claim of plaintiff that a part of as much as $280,000,000 should not have been apportioned to Kentucky on the mileage basis involves a fundamental principle. One is that the securities, book accounts and cash amounting to $46,836,666.89 were no part of plaintiff's unit and no part thereof was apportionable to Kentucky. If this contention is sound then $46,836,666.89, if that may be taken as the value of such securities, book accounts and cash, should have

been deducted from the $280,000,000 and a part of the remainder only apportioned to Kentucky on the mileage basis. This contention is based on the decisions in *Coulter* v. *Weir*, 127 Fed., *Fargo* v. *Hart*, 193 U. S. But this case does not come within the doctrine of those cases. In the former case the express company instead of distributing certain of its surplus earnings to its stock-holders as dividends invested them in the bonds and stocks of other companies, transferred them to a trust company issued its bonds against them and distributed these bonds to its stock-holders as a dividend. These bonds and stocks were not used in the company's business and had no other connection therewith except that the company's creditors might in certain contingencies reach them. So in the other case the express company owned certain real estate and personalty which was not used in its business and the only ground for claiming that it was part of its unit was that the ownership of such property gave the company credit. In each case it was held that such property constituted no part of the interstate unit and was not apportionable to states where it was not located. Here there is no evidence whatever that the property in question was not used in and to facilitate plaintiff's business. Everything tends to show that it was so used. The cash included the cash on which it did its regular business. I, therefore, think that the property was a part of plaintiff's interstate unit and that it as well as the rest thereof was apportionable to Kentucky on the mileage basis."

In response to our petition for rehearing the District Court said (Rec. 644, p. 170):

"Then as to the personal property claimed to be outside of the state and not a part of the plaintiff's unit for apportionment. I put it in my former opinion at $46,836,865.89. It really is $40,649.137.08. The

plaintiff claimed a deduction of $55,874,755 on this score before the Board and now drops over $15,000,000 therefrom. It made no showing of the real value of this property or gave an itemized list thereof so that the Board might make an examination as to the value thereof. Even if the Board should have made a deduction on account thereof it can not be said that it did not give sufficient consideration thereto. And in the showing here we have . thing but the itemized list of the affidavit of Mr. Blauvelt that these items were not derived from railroad operations or used for railroad purposes located and having their situs outside of the state. No attempt is made to put the court in position to determine for itself whether it is a part of its unit or any explanation given as to why plaintiff is holding on to this property, how its ownership and possession serves plaintiff, if at all, and why it is not distributed to the stockholders. Nor is any estimate of its value given. We have nothing but its cost or book value. As to this matter the cases of *Coulter* v. *Weir* and *Fargo* v. *Hart* do not apply. In the former case the property, in question had been placed in the hands of trustees for benefit of stockholders. In the latter case the facts do not clearly appear as to whether such a separation of the property from the express company had been made. It is likely that it had. All that appeared as to its use to the Company was that it gave it credit, which was the case in *Coulter* v. *Weir*."

The court, in conclusion, said (p. 171 of Rec. 644):

"The other consideration is that the assessment of plaintiff can not be said to be out of line with the other assessments involved before me in similar litigation in being unreasonably higher than any of them, whereas to accept plaintiff's position would make it unreasonably lower."

The Court thereupon compared the assessment *per* mile of the several railroad companies to prove that this Company was not over-assessed without any evidence whatever *as to the relative values* mile for mile of the several railroad companies, and even assumed the possibility of some mistake in the high assessment *per* mile of the "C., N. O. & T. P. R'y Co." when reference to the earnings mile per mile of that company (if the Court must speculate upon outside matters), appearing in Poor's Manual, would have given a clew to the mystery, for that line is simply a great trunk artery of commerce without unremunerative branches and with large *per* mile earnings.

From the quotations from the Opinion of the District Court it would seem that its grounds for denying this Company relief from the assessment in Kentucky of a mileage *pro rata* proportion of its investments in its Treasury in Chicago are (a) that in *Coulter* v. *Weir* similar securities in the Express Company's Treasury had been placed in the hands of trustees for the benefit of stock-holders, and that in *Fargo* v. *Hart* the facts *did not clearly show* whether or not such a separation had been made, but that it was *"likely that it had", nothing appearing, except that the securities gave the company credit;* (b) that the Company had given a list of such securities at the outset as $55,874,755, but had afterward diminished it by $15,000,000; (c) that it was not shown whether or not the investment securities were used for railroad purposes, why they were not distributed to stockholders, nor what was their value; and, (d) that the

assessment *per* mile in Kentucky of this Company's railroads did not appear out of line with the assessment of the railroads of other Companies.

We submit that no one of these grounds for denying this Company the relief prayed is maintainable.

(*a*) It is true that in *Coulter* v. *Weir* treasury securities in which surplus earnings had been invested had been placed with trustees to secure bonds for benefit of the stockholders, but no such situation existed in *Fargo* v. *Hart*, so that such consideration coud not have been controlling. On the other hand, the circumstances of the trust deposit, treated by the District Court as the *criterion* of the ruling principle, served only to emphasize the real principle *that the treasury securities were no part of the operating plant to be distributed, or apportioned, to the States.* This is demonstrated by the circumstance that such deposit did not exist in *Fargo* v. *Hart*, but it is clear from the consideration of the principle expounded in both cases.

The original record in the archives of this Court in *Fargo* v. *Hart* shows that the trust feature manifest in *Coulter* v. *Weir*, relied on by the District Court, did not exist in *Fargo* v. *Hart:* and this entirely destroys the basis of the District Court's conclusion.

In *Coulter* v. *Weir* the Court noted (p. 911), as said *supra:*

> "That the Express Company, as such, retains, under the terms of the conveyance, certain valuable property rights in the securities upon which these bonds were issued, by which, in certain contingen-

> cies, creditors may reach and subject them, is of no moment. That interest constitutes in itself *an outside investment* (italics ours) and is not properly to be regarded in estimating the Company's intangible assets taxable in Kentucky."

It thus appears that it was because the securities constituted "*an outside investment*", and were *not a part of the operating plant*, that they were not taxable in Kentucky.

The same principle clearly appears in Fargo v. Hart, this Court saying (p. 496):

> "It has real estate * * *, which is outside of Indiana and which it says is not used in its business, and fifteen million and a half dollars' worth of personal property in New York as to which it says the same."

There is no suggestion of personalty placed in trust.

Again, this Court said (p. 499) that Indiana could tax property if there, although owned elsewhere;

> "And when that property is part of a system and has its actual uses only in connection with other parts of the system, that fact may be considered by the State in taxing, even though the other parts of the system are outside the State. The sleepers and rails of a railroad, or the posts and wires of a telegraph company, are worth more than the prepared wood and bars of steel or coils of wire, from their organic connection with other rails or wires and the rest of the apparatus of a working whole. This being clear, it is held reasonable and constitutional to get at the worth of such a line in the absence of anything more special by a mileage proportion. The tax is a tax on property, not on the privilege of doing the business, but it is intended to reach *the intangible*

value due to what we have called the organic relation of the property in the State to the whole system." (*Italics ours.*)

It is obvious not only from the points decided, but also from what this Court said, that the principle which ruled the decision in *Fargo* v. *Hart*—and the same is true of *Coulter* v. *Weir*—was that the investment securities must be eliminated from the assessment, *because they are no part of the operated unit of the interstate plant*, and this Court cautions against pushing so far (p. 499) "this notion of organic unity" as to make it a means of unlawfully taxing property outside the State.

The soundness of our exposition of the principle involved becomes clear when we consider why a mileage proportion of an interstate plant may be adopted as the value of a State's taxable proportion of the total plant's value. The only justification of it is, not that the State may tax property situate in another State, but that it is impossible to determine *precisely* what part of the value of the unit is situated in any State. The taxation by mileage is simply a probative process to determine what part of the value of the line is actually in the State. Wherefore, the determination must be approximate only; and even such approximation, by mileage, is admissible only when it does not appear that one part of the unit line is more valuable than another part (193 U. S., p. 500). The reason is that if it appear that one part is more valuable than another, the excess value mile for mile must be taxed in the State where it exists, for otherwise another State would be taxing property outside its limits. This

is explained in *Fargo* v. *Hart* (p. 500), where this court said:

> "But it is recognized in the cases that if for instance a railroad company had terminals in one State equal in value to all the rest of the line through another, the latter State could not make use of the unity of the road to equalize the value of every mile. That would be taxing property outside of the State under a pretense."

It results, therefore, that the reason why the treasury investment securities are not apportionable among the States is, not that they are placed in a trustee's hands, but that they constitute no part of that unity of the interstate plant to be taxed. The reason for taxing the plant as a unit, and for distribution of its value on a mileage basis, is that this is the nearest approximation to a real valuation attainable. *This reason excludes any necessity for taxing anything but the operated plant.* If anything be separable, it must be taxed separately, as in the case of the terminals, and the outside securities mentioned in *Fargo* v. *Hart*. There is no reason to distribute anything but the unit, because by apportioning the unit each State gets the value of what is in the State.

There is no more reason for apportioning investments in personalty than investments in realty, and what would be thought of taxing in Kentucky a farm in Oregon because the railroad company owned it; or a mill in Maine for the same reason; or a railroad system in China? The coincidence that the Company owns the railroad lines through Kentucky, and also owns something else somewhere else, does not *constitute* everything owned an in-

tegral part of the operated mile of the interstate railroad. Wherefore, we submit that the District Court has misconceived the principle ruling the cases cited and the *instant* case.

(*b*) Nor does the circumstance that this company reported to the Board treasury investments $55,874,755 and afterward reduced the amount by $15,000,000 affect this case, except to the extent of the reduction. The reason for the reduction is fully explained by Comptroller Blauvelt (Rec. 642, pp. 151-2), saying:

> "Affiant further says that the court having intimated that a difference might possibly arise as to the situs for taxation of stocks, bonds, cash, notes, advances and miscellaneous property not derived from railroad operations or used for railroad purposes, as distinguished from items arising from railroad operations, and that this difference might affect the result of the computations hereinbefore presented in the said cause as exhibits setting forth the claim of the said complainant in regard to its taxable value situated in the State of Kentucky, affiant has caused to be made a true and correct statement showing the amounts of bonds, stocks, cash, notes, advances and miscellaneous property not derived from railroad operations or used for railroad purposes located outside and having their situs outside of the State of Kentucky", etc.

Said statements appear pages 153, *et seq.*

When the Company upon the intimation by the Court of its impressions, restated its list of investment securities so as to eliminate any of those of which the Court seemed to have doubt, it certainly appears unjust to the Company to discredit its entire claim because it under-

took to eliminate everything which the Court regarded as of doubtful validity.

Comptroller Blauvelt eliminated the amounts contained in Ex. B (p. 155) aggregating $7,466,764.38, leaving still included the securities in Ex. A (pp. 153, 4) aggregating $43,092,235.98, and changed the headings of Exs. A and B accordingly. The nature of the items in these exhibits was elaborately discussed in the testimony of Comptroller Blauvelt upon examination, cross-examination, and re-examination (pp. 198-206, inc.).

(*c*) When saying (Rec. 644, p. 170) that—

> "No attempt is made to put the court in position to determine for itself whether it is a part of its unit or any explanation given as to why plaintiff is holding on to this property, how its ownership and possession serves plaintiff, if at all, and why it is not distributed to the stockholders. Nor is any estimate of its value given",

the Court must unquestionably have overlooked the testimony of Comptroller Blauvelt.

He certainly explained what the items of the investments were, and that they were not included in the stocks and bonds representing the railroad lines owned, operated or leased. He said that for the year ended June 30, 1912 (p. 199) the stock of operated lines was of value $156,135,301, and the bonds of value $140,114,218, a total of $296,249,519, and explained how his valuations were obtained, and he said that as the last mentioned sum included all the Company's property, it would be necessary to deduct therefrom the value of the securities in the

Treasury. The distinction between the securities in the hands of the public, *the stocks and bonds covering the railroad lines aforesaid*, and those in the Company's Treasury, appears obvious.

Upon cross-examination Comptroller Blauvelt said (p. 199),

> "That the $50,559,000 intangible property aforesaid (for the year ended June 30, 1911) was assets invested in securities, amounts due complainant from other companies, cash in bank outside Kentucky."

From this sum he afterward deducted, as aforesaid, upon the Court's intimation of doubt on some items, the securities in Ex. B (p. 155) $7,466,764.38, leaving $43,092,235.98.

The Court asked the witness why the treasury securities were not distributed as dividends, and the latter answered that "the securities were more valuable prospectively than at present" (p. 199).

This certainly seems to furnish the Court information why the securities were not distributed as dividends, and we surmise the Court must have overlooked this testimony.

The Court, also, asked, "But do they help the company in any way to earn more money?" (p. 199) and the witness answered (p. 200), "None, unless you consider the income from the securities, that is all."

This testimony—and it is uncontradicted—established that the securities are not a part of the operating plant, but that the Company profits solely by an income from them in the way of dividends or interest payments. Also,

the witness explained that the $15,000,000 cash in bank was simply the proceeds of the sale of bonds, and was "later used for another purpose" (200).

Afterward, as aforesaid, the witness, on suggestion of the Court's doubt, separated all items about which doubt could exist, and placed with railroad items $4,616,417.80 cash (Ex. B, Rec. 644, p. 137) leaving as "proceeds of sale of bonds" $10,406,700 cash (p. 136) thus giving defendants the benefit of any doubt.

It thus clearly appears from the testimony that the Treasury Investments have no more connection with the railroad plant taxable as an organic unit than if the value of such securities had been invested in land in a foreign country; and the fact that the securities "more valuable prospectively than at present" were not distributed as dividends, as they might have been had the directors considered it wise so to do, can not possibly make such investment securities a part of the organic unit operated as a system of railroads.

The same is true of the $10,406,700, proceeds of sale of bonds. Whether it remained in cash or was invested in securities, its nature remained the same. Certainly it was not necessary to apportion cash as a part of an organic unit unless, *possibly*, a bare sufficiency of cash for railroad operation. The appropriation, therefore, in Comptroller Blauvelt's figures for this purpose, of $4,616,417.80 cash (Ex. B, p. 137; Rec. 642, p. 155) was most liberal to defendants.

As to proof of values of the treasury securities, we submit that the District Court is hypercritical. Certainly

the "cost or book value" (Rec. 642, p. 153) is presumptive evidence of real value of such properties. Indeed, a sale is generally the best evidence of value. The Kentucky Constitution (Sec. 172) fixes the criterion of value as "the price which it would bring at a fair voluntary sale". The Court must have forgotten this criterion of value in declaring that the "cost or book value" was *no evidence* of value.

Moreover, Comptroller Blauvelt testified directly to the value of the principal, or largest items of securities. Thus, he swore that the $3,474,249.02 *Cent. of Ga. R'y stock* "was worth what complainant paid for it" (Rec. 642, p. 200); and as to the "$6,000,000 Yazoo & Miss. Valley bonds" that none of them was on the market, but that their income was 4 per cent (pp. 200, 201); and the same as to the Tenn. Cent. bonds (p. 201). He swore that the $8,777,279.86 Indianapolis Southern bonds "were worth the sum at which they were carried" (p. 201). See, further, his testimony, p. 201, *et seq. All this testimony was absolutely uncontradicted;* no witness threw a suspicion upon an *iota* of it. Is it not, therefore, inadmissible to reject and to reject as to every part, *as to every item,* a claim of over $40,000,000 upon the ground that it is not proved when the testimony so fully establishes it? Indeed, it seems that the Court's position on this point must have been affected by his suspicion (Rec. 644, p. 171) that the assessment *per mile* of complainant's railroad in Kentucky was too low in comparison with that of other Companies, a misapprehension herein elsewhere explained.

Another obvious oversight by the Court is its refusal to accede to our Petition for a Rehearing to direct a reassessment upon a larger mileage, to include the mileage of the Cent. of Ga. R'y. Co. and the Yazoo & Miss. Valley R. R. Co., because if the securities of those companies were not mere treasury investments, but a part of the organic unit apportionable to the states, *then the mileage covered by the securities* should have been included. The taxpayer should not have lost both alternatives. It asked the elimination of the securities as not being a part of the organic unit, and was denied its prayer upon the ground that they were a part of it. It results, therefore, that the mileage covered by them ought to also have been included in the unit. This was prayed (Rec. 642, p. 166), but denied (p. 183), for the reasons given (Rec. 642, p. 170), viz., that the point was made too late, and that the Court was not sure that the statutory method was fair to the State. These answers are insufficient because the point did not arise until the Court treated the investment securities as a part of the organic unit for apportionment; and whether or not the statutory method was fair to the State was not a judicial concern.

Undoubtedly the controlled mileage is as certainly covered by the statute as the mileage owned, operated or leased, and the District Court so held in *L. & N. R. R.* v. *Bosworth*—heard with our cases—reported 230 Fed. 191, 198. The effect in the *instant* cases of including the controlled mileage was to eliminate entirely any sum whatever as franchise value over and above the tangible property taxes already paid (see Petition for Rehearing,

p. 166, Rec. 642, and p. 153, Rec. 644, and affidavits and tables attached). The inclusion of the controlled mileage reduced Kentucky's proportion from 12.3 per cent for 1912 assessment to 6.99 per cent, and from 12.3 per cent in 1913 to 6.97 per cent, upon a capital stock valuation not so much greater as to offset the difference in percentage in the inclusion and exclusion of the controlled mileage.

The affidavits filed with the petitions for rehearing so fully establish the valuations for which we contended upon the theory of the Court's decision in the L. & N. R. R. companion case that an issue could have been promptly made and determined upon it, and we submit that justice required it. The deterrent consideration that the statutory method of assessment by including the controlled mileage was in the Court's opinion unfair to the State, was not a sufficient reason for declining to enforce the statute. The Legislature must be assumed to have weighed all the considerations involved, and if inclusion of the controlled mileage was unfair to the State, or to the taxpayer, presumably the advantage or disadvantage was counter-balanced by other provisions of the Statute. No rule which could be adopted would always work to the State's advantage.

We, therefore, confidently assert our right to a reversal of the decree upon the *instant* point.

III.

Excess Values Outside Kentucky.

The defendants denied complainant due process of law in assessing in Kentucky property having its *situs* elsewhere, consisting in their disregard of the excess value mile for mile of the Company's railroad outside as compared with that inside of Kentucky.

Obviously, a distribution of the railroad unit on the mileage basis might be grossly unfair to one or more states. The railroad might be worth far more mile for mile in one state than in another, and the strict mileage basis would assess a mile in the Chicago Terminal and one in the Western Kentucky River Bottom at the same sum. This Court has well expressed its recognition of this truth in *Fargo* v. *Hart*, 193 U. S. 490, 499, saying:

> "It is obvious however that this notion of organic unity may be made a means of unlawfully taxing the privilege, or property outside the State, under the name of enhanced value or good will, if it is not closely confined to its true meaning. So long as it fairly may be assumed that the different parts of a line are about equal in value a division by mileage is justifiable. But it is recognized in the cases that if for instance a railroad company had terminals in one State equal in value to all the rest of the line through another, the latter State could not make use of the unity of the road to equalize the value of every mile. That would be taxing property outside of the State under a pretense."

This Court there explained the *Backus Case* and distinguished the Express Companies' cases.

About the same time the U. S. Circ. Court of Appeals (Opin. by Lurton, J.) announced the same doctrine in *Coulter* v. *Weir*, 127 Fed. Rep. 897, 908, 909. The Court of Appeals, however, solved the constitutional question by requiring the *total* tangible property *outside as well as inside the State* to be deducted from the *total corporate stock value*, leaving for apportionment to the State nothing but the franchise, or intangible property value of the Company. Thus was all diversity of value of tangible property in the different States eliminated. The Court (Lurton, J.) said (p. 908):

> "Sections 4078, 4079 and 4080 make it the duty of the companies mentioned in the law to furnish certain data by which the value of the intangible property of such companies may be ascertained, and prescribe the manner in which the board is to proceed in the valuation. When the value of the 'capital stock' is ascertained—meaning thereby every element contributing to value, whether tangible or intangible—the direction of the act is that from this shall be taken or deducted the value of all tangible property otherwise taxable. * * * Neither is the injunction in reference to a deduction of the value of tangible taxable property from the gross value of the whole corporate property limited to such as is situated within the state of Kentucky. If tangible property having a situs outside the state be included in the valuation of the company's intangible property, the purpose of the law, being to tax only intangible property, is defeated. We therefore read the act, as the Supreme Court seems to have read it in *Adams Express Company* v. *Kentucky*, as requiring the deduction of tangible property from the gross value of all corporate assets, whether such tangible property be within or without the state."

The District Court expressly repudiated the doctrine announced by the Court of Appeals, saying (209 Fed. 380, 420):

> "There is therefore absolutely nothing in section 4081 that allows of a deduction of the valuation of the tangible property both in this state and out of it from the valuation of both tangible and intangible property everywhere and then an apportionment of a part of the balance to this state on a mileage or any other basis."
>
> (421) "* * * what it contemplates is first an apportionment and then a deduction; the deduction to be of the assessed value of the tangible property in this state."

But the District Court concludes (p. 428):

> "BUT WHEN WE COME TO THE WEIR CASE IT MUST BE CONCEDED THAT IT CONTAINS AN EXPRESS HOLDING IN ACCORDANCE WITH PLAINTIFF'S CONTENTION." (*Capitals ours.*)

The District Court further says (p. 428):

> "In the Weir case Judge Lurton thus expressed himself:
>
> 'We therefore read the act, as the Supreme Court seems to have read it in Adams Express Company v. Kentucky, as requiring the deduction of tangible property from the gross value of all corporate assets, whether such tangible property be within or without the state.'"

After elaborate review of the *Backus Case*, 154 U. S. 421, 439; *Fargo* v. *Hart*, 193 U. S. 490; *W. U. Tel. Co.* v. *Mass.*, 125 U. S. 530, the District Court said (p. 425):

"In view then of this thought of the Supreme Court on the subject of assessing for taxation the part of such property unit located in this state, is it essential to reshape Sec. 4081, in so far as it relates to the third method, or the one applicable here, so as to make it require that there should be first a deduction from the total value of the value of the total tangible property and then an apportionment in order that it may be constitutional?

"I think not. If there is no special circumstance rendering the part elsewhere proportionately of more value than that in this state, there certainly is not. * * * The value of the tangible property can first be deducted from that of the capital stock, which would leave the value of the intangible property, and then a part thereof can be apportioned to this state on the mileage basis. But it can just as well, and even better, be done in this way: A part of the capital stock can be first apportioned to this state on the mileage basis, and then the value of the tangible property in this state can be deducted therefrom. This would give exactly the same result as before. * * *

"Of course, the simpler way is first to deduct the whole of such excess value, then to apportion the remainder on a mileage basis, and then to deduct the assessed value of the tangible property in this state. The result is the same either way. I am only concerned to show that, in order to keep from taxing in this state such excess value elsewhere, it is not essential that it be first deducted and that then the remainder be apportioned. It can be handled as successfully the other way."

The District Court admits that Kentucky can not tax indirectly through the unit system tangible property values existing in other states, and that where special circumstances exist the exceptional values elsewhere

must be deducted after if not before apportionment of the unit among the states (209 Fed. 426). Its quarrel is with the method sanctioned by the Appellate Court, and sanctioned upon its construction of the language of this court, of ascertaining such excess value and not with the principle involved. The Court even admits that in the case of Adams Express Company v. Kentucky, 166 U. S. 171, 180, this Court, through Mr. Chief Justice Fuller, said (p. 428):

> "* * * the legislative intention is plain that the entire property, tangible and intangible, of all * * * corporations, * * * possessing no franchise, should be valued as an entirety, the value of the tangible to be deducted, and the value of the intangible property thus ascertained be taxed under these provisions; and as to railroad, telegraph, telephone, express, sleeping car, etc., companies whose lines extend beyond the limits of the state, that their intangible property should be assessed on the basis of the mileage of their lines within and without the state."

The District Court, however, disposes of this Court's language as "an inaccurate *obiter dictum*" and says "so was Judge Lurton's holding"; see 209 Fed. 429.

The repudiation by the District Court of the doctrine of the Court of Appeals drove the former to the invention of a scheme for ascertaining the excess value in the tangible property outside the State, for the District Court recognized that such excess value could not be assessed in Kentucky. It said (p. 421):

> "There is but one possible ground, then, on which plaintiff's contention in this particular can be up-

held, and that is that it is essential to construe the section as providing first for a deduction of total value of entire tangible property from total value of entire property, and then an apportionment of a part of the balance to this state in order to keep it within constitutional limits. I have found it necessary to limit that portion of section 4079 prescribing the first method to companies which operate and conduct their business and have their entire property in this state in order to so keep it. And it may be necessary to so *reshape* Section 4081 in order to keep it within constitutional limits. How is it as to this?" (*Italics ours.*)

The controversy between the District Court and the Court of Appeals is, therefore, *based not upon principle but upon method.*

There *could*, therefore, *be no difference between the results of the two methods*, and this the District Court recognizes, saying, as aforesaid (p. 426): "This would give exactly the same result as before."

Complainant, however, found this assurance most delusive, for in reaching a remarkable valuation the defendants said that *they had considered* the Company's claim of an excess value outside the State, and from this the Court concluded that they had ascertained the amount of such excess value and deducted it from the total corporate stock value, *and that the Company's constitutional rights had been preserved;* although the Board had declared expressly the contrary, claiming that there was no such excess value. The court said (Rec. 644, p. 146):

"It claimed thereby that it was entitled to a deduction of $131,751,668 from the total cost of re-

production less depreciation of $363,975,545, leaving a balance of $232,223,877 for apportionment. It would seem that, at least, in the matter of terminals, the mileage outside of Kentucky exceeded in value that inside to a substantial extent. And according to the decision of the Supreme Court of the United States referred to in my opinion in the L. & N. R. R. Co. case no part of such excess value should have been apportioned to Kentucky. I think, however, that it must be taken that the Board made due allowance for this excess value in fixing the fair cash value of plaintiff's capital stock subject to apportionment at $280,000,000; Plaintiff claimed before it that such excess value should not be apportioned. The Board in its minute noted the fact of the claim and that it had been duly considered."

The Board, however, had said (Rec. 644, p. 32):

"In view of the fact, the ratio of gross and net earnings of respondent derived wholly within the State of Kentucky from the operation of its road in Kentucky, for the year ending June 30, 1912, and the next previous fiscal years was equal to the ratio of mileage of respondent in Kentucky, the Board is of the opinion and finds that the mileage of respondent in Kentucky is as valuable as the average mileage of the system and an apportionment of the entire capital stock of respondent to Kentucky on the mileage basis for the purpose of ascertaining the value of its franchise is fair and equitable to the State and company."

Thus vanished the deduction by which the District Court was at so much pains to explain the defendants had allowed complainant for the excess value of its tangible property outside the State, and thus $131,751,668, *the value of the Company's extensive terminals in Chi-*

cago, New Orleans, Memphis and elsewhere, was apportioned over the Company's entire mileage, and a part of it assessed for taxation in Kentucky *as was not only avowed by the members of the Board, but by them justified.* The District Court's method of ascertaining the excess value aforesaid is, therefore, obviously unworkable. Why then should not the Court of Appeals' method be adopted when the District Court acknowledges that the results of the two methods must be the same? Upon the District Court's plan of resolving constitutional rights, all such rights could be easily destroyed; if, for example, this complainant is entitled to a deduction from the total capital stock valuation of the value of its treasury Investment Securities, of the excess value of its great Chicago, New Orleans and Memphis terminals and excess land values elsewhere, and is entitled to equalization of assessed value with other property in Kentucky as claimed by it; nevertheless the members of the Board might, consistently with the decision of the District Court, destroy all such rights *by simply declaring that they had considered the Company's claims, and entering the fact of the claims upon their minutes.*

If constitutional rights could be thus disposed of, they would indeed be of little value. Assessing officers are not permitted to assess property outside the State by simply concealing the fact that such assessment has been made; and, likewise, they can not reach the same result by simply declaring that they have made deduction of such excess values, or made computation of such excess and deducted the amount from the total corporate stock

valuation. The District Court seemed to recognize this principle in *Ches. & Ohio R'y. Co.* v. *Bosworth, et al.* (209 Fed. Rep. 469, 470), companion of the *instant* case, in saying:

> "But the assessment is also subject to attack on the ground that the board did not enter of record or give to plaintiff notice of its conclusions in regard to the matters as to which the statute required it to reach conclusions, and, if the facts justified it, that it was in violation of the fourteenth amendment, in that it deprived plaintiff of its property without due process of law by taxing property elsewhere. Inconsistent and conflicting statements have been made in regard to these conclusions and this case has features rendering it possible that by the assessment property elsewhere is taxed in this state."

The District Court also recognized it in *Lou. & Nash. R. R. Co.* v. *Bosworth, et al.* (209 Fed. 380), in declaring (*Syll. 6*) that the corporation *was not afforded the hearing to which the law entitled* it when the Board *did not divulge either by notice to the Company or in its minutes the method of its assessment.*

If the members of the Board may dispose of the constitutional right to exemption from assessment of values existing outside the State, they may likewise so dispose of an objection to the assessment of Treasury Investments in a foreign city, or country, and may assess one corporation at 100 per cent, another above par, and a third far below par. In other words, they may arbitrarily assess any corporation what they may please. They may deny corporations equalization with other property of the same class, and the corporation would be remediless.

In the *instant* case complainant proved the excess value of its tangible property *mile for mile* outside the State by showing its reproduction value less a certain specified depreciation of its entire tangible property and in like manner of its tangible property in Kentucky, and thus the *per cent* of excess value outside the State was shown; but the Court denied the Company relief on this point (Rec. 644, p. 169), apparently on the grounds thus stated:

> "In the absence then of its appearing that the Board did not make due allowance on account of these terminals, *i. e.*, included them in the apportionment it is to be taken that it did make such allowance and did not so include them. But it is not only a matter of presumption; there are circumstances tending to show that it made allowances for them and did not intend, at least, to include them. * * * Besides plaintiff relies on the cost of reproduction to show the value of its terminals. In the absence of it there was and is no evidence as to the real value of such terminals so as to know just how much reduction should be made on this account."

The *first* point made by the Court has already been disposed of; the *second* point seems to involve oversight, for it was not necessary to prove "the real value of such terminals" "so as to know just how much reduction should be made on this account" (excess value), because it sufficed to show *the per cent of excess value* outside the State, and this was shown; Daniel J. Brumley, Valuation Engineer of this Company, testified (Rec. 642, pp. 193, 194) that the valuation referred to in the testimony introduced by the Company meant the *reproduction cost*

less an allowance for depreciation, a method of valuation approved by engineers; that an effort had been made to ascertain such value of the Company's property in Kentucky and elsewhere, and that for the fiscal year ended June 30, 1911, the value so ascertained of the lines in Kentucky was $24,156,803, and for the next year $24,456,800, and that the depreciation was estimated at 10 per cent; that the value thus ascertained *per mile* in Kentucky was $42,847 for the first year, and $43,376 for the second year, while the system values similarly ascertained were for the first year $319,683,045, equivalent to $70,252 per mile, and for the second year $324,790,000, equivalent to $71,394 per mile. He showed that the figures given indicated that a Kentucky mile had a reproduction cost less depreciation of 60.8 per cent of the system mile; and he indicated as the reason for the difference that the terminals at Chicago, East St. Louis, Memphis, New Orleans and Louisville constituted a very large per cent of the entire value of the Company's property, "and that the reproduction value of the Louisville terminals, the only large terminals in Kentucky, was $3,622,400, of the Chicago terminals $120,660,000, of the East St. Louis terminal $3,400,000, of the Memphis terminal $8,315,000, of the New Orleans terminals $9,189,000."

The engineer testified that the reason for the heavy reproduction cost of the terminals was (Rec. 642, p. 194):

> "* * * the great size of the tracts of land required at high unit values, and the construction of the terminals because of the separation of all grades in the city streets, taking care of public utilities,

> construction of passenger stations, engine terminals and shops, and the cost of constructing the roadbed in congested cities, * * *."

He further testifies (p. 194) that exclusive of the large terminals at Chicago, East St. Louis, Memphis and New Orleans, the average value per mile of the road in Kentucky had been found to be about $38,000 *per mile*, and that an apportionment of the value of the large terminals outside Kentucky to the mileage outside Kentucky would yield $33,000 per mile; that excluding the Louisville terminal the value per mile in Kentucky would be $37,000, and that the Louisville terminals would represent a value of $6,000 per [Kentucky] mile; and that excluding the terminals the value *per mile* outside would exceed the value *per mile* inside Kentucky approximately $1,000 per mile: So that the excess in value of complainant's physical property outside over that inside was especially in the great terminals, and that the terminal values in Kentucky were small compared with those of the whole system being only about 16 per cent on a mileage basis.

It is an insufficient disposition of a claim of such magnitude based upon evidence so definite to sweep it aside upon surmises so unsubstantial as those indulged by the Court. It is inadequate to refer to the Company's evidence on reproduction value and to say (Rec. 644, p. 169) "of course it is plaintiff's claim that the cost of reproduction is not the value. *But I will have to know more about such matters than I do now* to understand why the physical plant of a successful concern is not worth the

cost of reproduction. Besides, plaintiff relies on the cost of reproduction to show the value of its terminals." (*Italics ours.*)

This, as aforesaid, involves an oversight, for the evidence just recited at length shows that it was the *per cent of excess value* which the Company was proving, and did prove, by the evidence just adduced, and that the application of such *per cent* reached an unerring figure resolving the value for deduction on the score in question. But if, as the Court says, the Court can not, *in its present state of knowledge of such matters,* "understand why the physical plant of a successful concern is not worth the cost of reproduction", *it would follow that the value of the tangible property (cost of reproduction) would exceed the value of the capital stock as found by defendants and there will be no franchise value under the method expounded by the Court of Appeals for ascertaining such excess value outside the State; and the District Court admits that the result would be the same under either method.*

Under the Court of Appeals' method, the burden would be upon defendants to find a franchise value before they could assess it, and, consequently, they must ascertain the corporate stock value and the tangible property value and subtract the latter from the former in order to determine the franchise value apportionable to the states; but under the doctrine of the District Court the burden would be cast upon the taxpayer to purge the defendants' work of its illegality by showing, *in some way,* the extra-territorial excess value involved. This

was difficult in the *instant* case when the Court candidly confessed a lack of knowledge "about such matters" (Rec. 644, p. 169), and when the Court entertained a suspicion that this Company's railroad ought to be assessed as high *mile for mile* as the roads of other companies in Kentucky, the Court saying, as aforesaid (Rec. 644, p. 171):

> "The other consideration is that the assessment of plaintiff can not be said to be out of line with the other assessments involved before me in similar litigation in being unreasonably higher than any of them, whereas to accept plaintiff's position would make it unreasonably lower."

The Court, in this connection, recities complainant's mileage assessment at par as $60,750, the *Lou. & Nash. R. R. Company's* assessment as $58,540, the *Ches. & Ohio Railway Company's* as $37,000, and that of the *Cin., N. O. & Tex. Pac. R'y. Company's* as $119,425.

When we consider the disparity between $37,000 per mile for the Ches. & Ohio Railway and $119,426 per mile for the Cin., N. O. & Tex. Pac. Railway it is difficult to see what index the Court obtains from a comparison of the mileage values of the principal railroads of the State; but had the Court known the *mileage earnings* of the several Companies it might have, at least, received some explanation of the facts which seemed to disturb the Court's judgment.

It remains only to show that defendants' ground for disallowing our claim of excess value outside the State (for they disallowed it as above shown) was unfounded.

They declared that they denied the existence of excess value (Rec. 644, p. 32) as aforesaid, because the ratio of gross and net earnings of the Company in Kentucky to the total was about the same as the ratio of mileage. Whatever force this phenomenon might have carried if unexplained, disappears when explained by the testimony of Comp. Blauvelt (Rec. 642, p. 196). He explained the terms "Kentucky earnings" and "Kentucky net earnings," saying that the earnings from local traffic were, in the Company's reports, earnings localized to the State; that the traffic originating between certain points *interstate* was divided on a straight mileage *pro rata* with minimums of specified mileage.

It therefore appears that the so-called "Kentucky earnings" attributed to Kentucky traffic, reported because the Kentucky officers demanded such report (Rec. 642, p. 196), were no index whatever to the earning value of the lines in Kentucky, *because that part of such earnings which accrued from interstate traffic represented a mileage proportion of earnings accruing outside as well as inside the State.* If, therefore, the railroad outside which assisted in making the earnings, was of more value than the railroad inside the State, the so-called "Kentucky earnings" included the earnings of that excess value outside the State.

A strong authority in our favor on this point is *Nevada, etc., Co.* v. *Hamilton*, 235 Fed. 317, 323, *et seq.*

On the whole, therefore, we submit that complainant's claim of its right to be exempt from assessment on the excess value of its railroad outside Kentucky has been

established by evidence remarkably satisfactory in view of the exigency presented to complainant when the District Court repudiated the method sanctioned by the Court of Appeals of ascertaining such excess value, and cast upon the Company the burden of showing the amount of deduction from total corporate stock value to which it was entitled.

IV.

Equalization.

It is convenient to consider this point under three heads: (a) the facts attending the action of defendants in denying the complainant equalization; (b) the authorities showing the competency of the evidence introduced by the complainant to prove such facts, and (c) the law governing the complainant's right to equalization.

Inasmuch as the Kentucky Statutes are so fully discussed by this Court in the Express cases, 166 U. S. 171, it suffices to recall that railroad property in Kentucky is assessed by two boards, the Railroad Commission (Ky. Stat., Sec. 4096, *et seq.*) assessing what is called the "tangible" property, and the Board of Valuation and Assessment (Ky. Stat., Sec. 4077, *et seq.*) assessing the franchise, so-called. The franchise assessment is construed to be an assessment of the "intangible" property of the corporation; *Lou. Tobac. Wh. Co.* v. *Com.*, 106 Ky. 165; *Henderson Bridge Co.* v. *Ky.*, 166 U. S. 150.

The Railroad Commission is not by the statute required to assess only *ground, wood and steel*, but re-

quired to assess the railroad "for the purpose of being operated as a carrier of freight and passengers," (Ky. Stat., Sec. 4096). This assessment obviously includes the *franchise* in a strict legal sense, leaving nothing for assessment by the Board of Valuation and Assessment except the corporation's intangible property consisting of stocks, bonds, choses in action, etc., etc.—its "intangible property"—*but the Board actually assesses the total capital stock value*, and subtracts the amount of the Railroad Commission's assessment upon the assumption that it covers "tangible" property only, and this is the legal *status* recognized by the courts.

For the 1912 assessment the Commission assessed the "tangible" property at $12,377,383 and the defendants assessed the "intangible" at $14,746,857 (Rec. 642, p. 11); and for the year 1913 the Commission assessed the "tangible" property at $12,478,903 and the defendants assessed the "intangible" property at $11,200,277. The Commission's assessments and the franchise assessments by defendants' predecessors (Rec. 642, p. 261) show the regularity of their progress prior to 1912.

The defendants thus suddenly assess complainant's franchise for 1912 at actually more than the assessed value of its tangible property, and for the year 1913 for almost as much, although said franchise had never prior thereto been assessed at more than about one-third the amount at which the tangible property was assessed, and there were then in Kentucky no stocks, bonds, or choses in action, nor any other intangible property outside of the "franchise" in a strict sense, unless money

or accounts, and it is not claimed that any such existed except the mileage proportion of the Treasury Securities; see testimony of Comp. Blauvelt (Rec. 642, pp. 151, *et seq.*).

The *instant* point, complainant's right to equalization, arises out of defendants' assignment of error, No. 6, Rec. 642, p. 270, and No. 6, Rec. 644, p. 187, and complainant's, No. XIV, Rec. 642, p. 190, and No. XVI, Rec. 644, p. 185, the District Court having held complainant entitled to equalization at 60 per cent. Although we shall hereafter cite authorities to show the law ruling the point, it is proper to here indicate the rule established by the authorities so that the relevancy of the evidence discussed may readily appear. By the Kentucky Constitution (Sec. 172) it is provided (see Appendix):

> "All property, not exempt * * * shall be assessed for taxation at its fair cash value," etc.;

but it is provided (Sec. 174):

> "All property whether owned by natural persons or corporations shall be taxed in proportion to its value unless exempt by this constitution, and all corporate property shall pay the same rate of taxation paid by individual property."

The rule governing the *instant* question is that a complaining taxpayer is entitled to the relief here prayed if the discrimination against him be *intentional* and systematic, or uniform in undervaluing the property of others; *Coulter* v. *L. & N. R. R.*, 196 U. S. 606, 608, 609, 610; *Cent. R. R. Co. of N. J.* v. *Jersey City*, 199 Fed. 237, 242 (affirmed 212 Fed. 76).

This Court said (196 U. S. 606):

"From a consideration of different kinds of evidence the Circuit Court reached the conclusion that the County Assessors had systematically and intentionally undervalued the property assessed by them * * * (p. 607). The reasoning is careful and elaborate and can not be read without an impression that probably it is correct to the extent of establishing a general undervaluation of land."

Again (p. 609):

"It is not contended that a mere undervaluation would be enough. It is admitted that it must have been systematic and intentional * * * (p. 610). Inequality, we repeat, is nothing unless it was in pursuance of a scheme."

As the Coulter case was an appeal from a judgment similar to that in the *instant* cases, the principles expounded are exactly applicable here and the only question remaining is whether or not complainant has made out its cases under such priciples, this Court having held in the Coulter case (p. 609) that there was "no such certainty that it (the assessment) was made on a different scale of values from that adopted elsewhere, as would warrant an attack upon it under the Fourteenth Amendment, even if otherwise that attack could be maintained."

The Facts on Equalization.

The District Court (Cochran, J., whose judgment was reversed in the Coulter case) said, in *Lou. & Nash. R. R.* v. *Bosworth* (companion to the *instant* cases), 209 Fed. 457:

"As to the property owned by individuals and corporations subject to assessment by the County

> Assessors and Boards of Supervisors and the State Board of Equalization, there can be no question that it, too, has been uniformly and purposely assessed at less than its fair cash value, possibly as much as 40 per cent less."

Also he said (p. 458):

> "The main ground upon which Mr. Justice Holmes hesitated to accept the conclusion which I reached in the Louisville & Nashville Railroad Co. case, and which he said was probably correct, and to act upon it, was the testimony therein of the members of the Board of Equalization. But such a ground for hesitation no longer exists. The Board for the years 1910 and 1911 in its reports to the Governor frankly admit the under-assessment."

Corroborative of its declaration, the Court quoted defendants' counsel, and quoted at large from the Board's reports for 1910, 1911 and 1912; and said (p. 460):

> "The existence of this substantial under-assessment of such property is confirmed by the showing made by the United States Census. According to the census of 1900, the assesed value of farm property in this State, consisting of land, buildings, machinery, implements, and live stock, was 63 per cent of the cash value, whereas, according to that of 1910, the percentage was 51.6. * * *
>
> "Progress, therefore, has been made along the line of truthfulness since 1902. No longer do the courts have to contend with the sham and pretense that ordinary property in this State is assessed at its fair cash value, or substantially so."

This court in Cummings v. Bank, 101 U. S. 158, said, *as quoted by the District Court*, 230 Fed., p. 213, 14, that assessment of real estate at less than true value was not

"limited to the State of Ohio or to part of it, and that notwithstanding State constitutions and statutes requiring uniformity of assessment," etc., it was "a matter of common observation that in the valuation of real estate the rule is habitually diregarded"; and that "it is believed that the valuation of real estate for purposes of taxation rarely exceeds half of its current salable value."

The *intentional and systematic* under-assessment of property generally by local assessors, as the District Court found, is demonstrable from the record. It is, however, confessed by the demurrer in Case No. 617, *Lou. & Inter. R. Co.* v. *Greene, et al.*, and Case No. 618, *Lou. R'y Co.* v. *Greene, et al.*, companion cases of the *instant* cases.

The rule of law hereinafter discussed, therefore, arises upon confessed facts in the companion cases. The evidence in the *instant* cases, however, is not only conclusive, but illuminating.

(a) Indeed, so well-known was it 25 years ago that property was assessed far below its real value that the Legislature provided (Carroll's Ky. Stat., 1894, Sec. 4274) for equalization at 70 per cent; saying:

> "The said Board of Equalization shall fix the percentage of assessed value of real property at 70 per centum of cash value, and all counties whose average lists of real property are below such per centum shall be raised to the same, and all those counties whose average lists are above the same, shall be lowered to said standard"; *Lou. R'y* v. *Com.*, 105 Ky. 716, and comments on the Statutes, pp. 717, 718.

(b) That the District Court was fully corroborated in its conclusion aforesaid by the Board of Equalization is shown by its quotation from the Board's reports, 209 Fed. 458, 459.

In its REPORT FOR 1910, the Board said (209 Fed. 458):

> "The revenue laws provide that all property shall be assessed at its fair cash value. It was not contended that this was done in a single county; therefore, the Board of Equalization was not privileged to reduce any assessment. We selected those counties that most nearly conformed to the requirements of the law and endeavored to equalize the others with them."

And again:

> "The increase made by the State Board of Equalization averages 8 per cent, and with this addition, is no measure of the fair cash value of the property in the State."

Concerning the Coulter case, the District Court said (p. 457):

> "I confined myself in that case entirely to reasoning from the facts in evidence. I might have been justified in saying then, as now, that it is a matter of common knowledge to any one living in this State with a reasonable acquaintance with its affairs that such is the case."

The State Auditor was chairman both of the Assessing Board and Board of Equalization which sat virtually concurrently: So that the Assessing Board had a member who had reported under oath that "it was not contended" that property was assessed "at its fair cash

value * * * in a single county"; also reported that after advancing assessments 8 per cent they were then "no measure of the fair cash value of the property in the State." Obviously, therefore, even the general assessment concluded by the Board of Equalization was far below fair cash value, how much is not confessed.

In its REPORT FOR 1911, the same Board declared concerning the counties "not one of them was assessed at a measure of its fair cash value." Thus, it appears that the assessors in 1911 acted as in 1910. The Board's REPORT FOR 1912 shows a decrease in totals: 209 Fed. 460.

From the solemn reports of the Board, whose duty it was to equalize assessments throughout the State, we learn for the years in question and last previous year, that in no single county was the assessment a "measure of the fair cash value"; and *that the Board only raised the average 8 per cent in 1910, 3.7 per cent in 1911, and 1.9 per cent in 1912 when the local assessment was lower than for 1911;* but the result of the Board's action in 1911 is thus graphically declared (209 Fed. 459):

> "The result is, that after the number of lists that the Assessor arbitrarily increases is added to the number that the County Board of Supervisors raise, there remains about 95 per cent of the people in the State who fix the sum themselves upon which they are willing to pay taxes, and it is a safe assertion that 99 per cent of that 95 per cent are not inclined to pay a great amount." (Rec. 642, pp. 220, *et seq.*)

What the reports of the Board of Equalization failed to state, *viz.*, the *per cent* of assessment value below actual value, was supplied by another State Board, *to-*

wit, the Special Tax Commission of 1912-14 (Rec. 642, p. 223) organized under legislation authority to "investigate revenue and taxation in this State and recommend a plan for the revision thereof." This Commission reported p. 36; Rec. 642, p. 223:

> "*Farm Lands Assessed at Fifty-two per cent of True Value.*"
>
> "Thus our tables show that the average ratio of assessed value to true value of farm lands throughout the State is about 52 per cent. This establishes the fact of universal undervaluation, although the law calls for full value. * * *"

See, also, tables reported by the Commission, Rec. 642, pp. 224-229, inclusive.

The Commission confesses that property generally throughout the State of Kentucky is assessed by the local assessors at an average of 52 per cent of real value; *and this indubitable evidence did not exist when this Court decided the Coulter case.*

It is probably unnecessary after confession by the Commonwealth, under whose authorization defendants claimed to act, to proceed further with proof, but we shall briefly refer, nevertheless, to the voluminous evidence in the record.

In his affidavit, read by stipulation as his deposition, Geo. W. Lamb has collected statistics from the *United States Census* and from the *Records of the State Boards*, and shows the ratio of assessed value to real value of real and personal property to be 45.9 in 1904. He indicates from Tables 14 and 15 from the Special Census

Report of WEALTH, DEBT AND TAXATION issued in 1907 that such ratio was 45.9 per cent, and by the Census of 1910, line 15 of the Board of Equalization Report, that farm lands and improvements were assessed in Kentucky at 55.9 per cent of real value, thoroughbreds and other standard live stock at 48.8 per cent, and agricultural implements, fences, etc., at 42.8 per cent. He also shows from Census Bureau, 1907, Table III, p. 16, farm lands and improvements assessed at 52.87 per cent of actual value, from all of which it results that tracts of land and improvements were assessed in Kentucky at 52.872 per cent of actual value. (Rec. 642, p. 12, *et seq.*)

The dumb eloquence of the confessions of the Boards and Commission is re-enforced by the testimony of John E. Garner (Rec. 642, p. 215), who was chairman of the Board of Equalization from 1908 to 1911, and who testified that in his opinion the ratio of assessed value was from 40 to 50 per cent of real value of all classes of real estate; *that the Board endeavored to raise the assessment from its ratio of 40 or 50 per cent to approximately 60 per cent of real value.*

Direct evidence, so far as practicably obtainable, of the ratio of assessed to true value corroborates the confessions of the Public Bodies of the Commonwealth. Thus Wm. L. Tarbet (Rec. 642, p. 208) gives the figures showing assessments of the different classes of property in Kentucky aggregating $1,036,319,517 based upon figures obtained in the State Auditor's Office, the proper repository of the records. The Assistant Auditor's letter was as follows (Rec. 642, p. 267):

Frankfort, November 18, 1912.

Hon. Wm. L. Tarbet, Land and Tax Commissioner, I. C. R. R. Co., Chicago, Ill.

Dear Sir: Responding to yours of the 16th, I take pleasure in giving you the information called for.

1900.

Total value of lands	$251,850,226.00
Total value of town lots	197,550,431.00
Implements and machinery	10,503,439.00
Live stock	36,513,119.00

1910.

Total value of lands	$341,895,099.00
Total value of town lots	286,110,991.00
Implements and machinery	12,214,470.00
Live stock	45,444,744.00

I think this is what you want. You did not mention town lots and in case this is not desired same may be deducted. By buildings I suppose you meant the improvements which are included in "Lands."

Yours very truly,

G. B. Likens, *Assistant Auditor.*

From United States Census, 1900 and 1904 (Rec. 642, p. 220), the ratio of assessed to real value in 1900 is shown to be 63 per cent and in 1904, 48.3 per cent, and of real estate and improvements 62.8 per cent in 1900 and 62.2 per cent in 1904, and of personalty 34.5 per cent in 1900 and 32.2 per cent in 1904.

In view of such evidence, and of the finding made by the District Court, it seems almost a work of supererogation to prolong the argument to show the general under-

valuation of property throughout the State, but it has been further shown by a series of affidavits (read, by stipulation, as depositions) collected by the Railroad Companies involved in the *instant* litigation from the counties through which their lines run. (Rec. 642, pp. 230, *et seq.*) These affidavits are made by persons having local information of values in their counties, many of them ex-sheriffs, ex-assessors, ex-judges, etc. To test the accuracy of the evidence of such witnesses the Railroad Companies aforesaid caused to be made a list of the transfers of real estate during eight months after December 1, 1914, when the War Tax became effective, and instituted comparison of assessed values as of September 1, 1914, to the values shown by the War Stamps with the result that the ratio of assessed value to true value appeared to be 50.53 per cent. (Rec. 642, pp. 255, *et seq.*)

Such comparison of real values, shown by the Federal stamps, to assessed values serves to correct the estimates made by some witnesses for defendants, *e. g.*, the Assessor for Louisville, Jefferson County (Rec. 642, p. 247), swears that he found the National Banks assessed on a basis of 60 per cent of value when he assumed office in 1910, and equalized on a 60 per cent basis for 1910 to 1914, inclusive, although he had endeavored in 1910 and in 1913 to raise the assessment to an 80 per cent basis.

P. S. Ray, Clerk of the County Court of Jefferson County, certified to 10,308 transfers of real estate in his county, and that in only 3.55 per cent was the consideration shown; but that in a list of 63 assessments, where the consideration was shown the assessed value was 60

per cent of real value. (Rec. 642, p. 258.) Such ratio for Jefferson County is given by the Tax Commission aforesaid as 60.5 per cent. An actual test, therefore, made by the clerk exactly corroborates the Tax Commission and refutes the testimony of the defendants' as to Jefferson County upon the assessment of the property on which they relied to overcome the claim of complainant.

Likewise Fayette County, another very wealthy county, selected by the defendants to work such refutation, destroys defendants' contention, as the test made by the Master Commissioner of the Fayette Circuit Court (Rec. 642, pp. 249, 250) shows ratio of assessed to real values in judicial sales from 37.3 to 80 per cent, an average of 59 per cent, and the test based upon War Tax (Rec. 642, p. 256) shows a ratio for Fayette County of 48.6 per cent, *the latter being voluntary sales* (the statutory test), and the *former forced*, or judicial, sales. The Tax Commission's ratio is 54 per cent for Fayette County.

Although, therefore, there may be some counties in the State in which there is a comparatively small amount of property assessed at a higher ratio than 60 per cent, the great bulk of the property in the State is shown to be assessed at considerably less, a large quantity of it at far less, and the average at 52 per cent.

In opposition to the testimony of the witnesses aforesaid, the former Attorney General Garnett (Rec. 642, pp. 241, 2), introduced certain affidavits covering Adair, Boone, Boyle, Fayette, Kenton, Nelson, Lincoln and Jefferson counties, whose assessments aggregated $308,-

069,386, and said that such affidavits showed that more than one-third of the assessed value of the State was assessed at not less than 80 per cent of the real value.

We have just shown that this was not true as to Jefferson and Fayette counties. These counties were treated circumstantially because of the great value of property therein. The same is disproved as to Nelson County where the consideration as shown by stamps was $192,368 assessed at $100,470.00, ratio 52.228 per cent. (Rec. 642, p. 258.) The ratios obtained from the War Stamp computation does not appear for the counties of Adair, Boone, Boyle, Kenton and Lincoln, but the Attorney General's position with reference to those counties is refuted by the Tax Commission's Report (Rec. 642, pp. 223, *et seq.*) where the following ratios are shown:

Adair . . . . . 46 % (p. 224)
Boone . . . . . 62 % (p. 224)
Boyle . . . . . 49 % (p. 224)
Kenton . . . . . 78.5% (p. 227)
Lincoln . . . . . 51 % (p. 227)
Nelson . . . . . 56 % (p. 228)
Average 57%.

Green and Taylor counties relied upon by the Attorney General (p. 242), appear by the Tax Commission's Report as follows: Green County ratio 33.6 per cent (p. 226), and Taylor County ratio 30 per cent (p. 229). A more unhappy selection of counties to show high ratio could hardly have been made.

It is interesting to note that although P. S. Ray, Clerk of Jefferson County Court, made affidavit of ratio of assessed to true value at 80 per cent (p. 244), his delu-

sion was removed when he made computation of the ratio upon War Stamps at 62.7% (Rec. 642, p. 258). It may, therefore, be treated as established that defendants' testimony wholly fails to shake the structure built by complainant as above indicated.

It would be difficult, however, to make a review of the evidence so complete and satisfying as that of the District Court in *Lou. & Nash.* v. *Bosworth*, 230 Fed. 226, 231, inclusive. After reviewing Kentucky Legislation on the subject and emphasizing former statutory recognition of a 70 per cent ratio of assessed to true value, the court reviews the State official reports, Federal Census statistics, and the evidence introduced by affidavits—treated by stipulation as depositions—with the inescapable conclusion that property in Kentucky is assessed uniformly at "not more than 60 per cent" of actual value. The real ratio is about 52%. It remains, therefore, to consider whether or not such general undervaluation is intentional, habitual, systematic or uniform. The affirmative is virtually susceptible of demonstration, for it is inconceivable that such uniformity in undervaluation was accidental.

The same question of uniformity of action by the assessing officers was encountered in the numerous cases so ably reviewed by the District Court in 230 Fed. 214, *et seq.*

This point may be considered with reference to the County Assessors, and also with reference to the State Board of Equalization. Doubtless consideration of it with reference to the *latter* would suffice because its action

is final and co-extensive with the State. Probably, therefore, a consideration of the action of the Assessors is valuable principally to show the extent of the inequality so acquiesced in by the State Board. But the evidence in the record abundantly shows intentional undervaluation by the County Assessors also.

First, the principle of *res ipsa loquitur* really applies because when the Assessors of about 120 counties greatly undervalue the property of the State in their respective counties, their acts must necessarily be intentional. The point is not open to serious discussion.

Secondly, the reports aforesaid of the Board of Equalization (Rec. 642, p. 221) not only established such intentional undervaluation by the County Assessors, *but explain the reason for their action*, saying:

> "All witnesses who appear before the Board are appointed by the County Judge after he has received notice of a tentative raise by the Board. It is seldom that the judge will select a witness who has not formed an opinion and expressed a desire to appear in defense of his county. All the evidence before the Board is *ex parte*. The record is made up by the county officials and all witnesses selected for the purpose of testifying for the defense. There are a few good assessors in the State—we say a 'few' for the lack of a general term that expresses a lesser number.
>
> "The impression seems to be gaining ground throughout the State that we have a 'single tax' system, and that personal property is exempt from taxation, and, inasmuch as real estate is compelled to bear the burden, it is the privilege of the owner and the duty of the officials to connive to list all property at a very low figure. In the matter of

personal property no witness testified that the Assessor claimed to have assessed it fully, or that the owners had intended to give it in at its worth. In substance, they contend that it is not given in anywhere, and excuse themselves on the ground that it is a matter of perjury or poverty, and exercise their right of choice.

"The result is that after the number of lists that the Assessor arbitrarily increases is added to the number that the County Board of Supervisors raise, there remains about 95 per cent of the people in the State who fix the sum themselves upon which they are willing to pay taxes, and it is a safe assertion that 99 per cent of that 95 per cent are not inclined to pay a great amount."

It here not only appears that throughout the State it is regarded as the privilege of the owner and *duty of the officials* to "connive to list all property at a very low figure," but the reason therefor is explained, *viz.*, that personal property is not listed anywhere, and that real estate must be assessed "at a very low figure" because of the unjust burden which it must bear. Also, it is shown that after the work of the Assessors is done in the manner so indicated, *the county judges endeavor to prevent the State Board's raising the local assessments, and select witnesses with that view.* It is, therefore, shown not only that the action of the county authorities is intentional, but that it is defiant. Their acts, doubtless, fulfill what is denominated by this Court through Mr. Justice Holmes in *Coulter* v. *Lou. & Nash. R. R., viz.*, a "scheme."

Opposed to our claim upon this point the defendants filed ninety-four affidavits of ex-county assessors (Rec.

642, p. 261) to the effect that in assessing property they endeavored to assess at fair cash value, and "if any property in said county was assessed at less than such fair cash value, it was unintentional on the part of the officers in the county whose duty it was to assess property for taxation:" Also, that the Assessor never had an agreement or understanding with any other officer or anyone that property should be assessed at less than fair cash value, that he never heard of such agreement, and "that no property was ever intentionally assessed by him for less than its fair cash value," "and if he so assessed any property it was on account of mistake for lack of proper evidence as to its value."

When we consider the incontrovertible, if not uncontradicted, evidence as to the great under-assessment of property throughout the State, and the reports of the Board of Equalization, such affidavits from the men who had been guilty of the universal undervaluation are seen to be self-stultifying. The District Court thus disposes of them (230 Fed. Rep., p. 230):

> "The evidence in the case, therefore, seems to be sufficient to convince any one of the truth of plaintiff's claim that the property in this State subject to assessment by the county assessors for the year 1913 was uniformly undervalued to a substantial degree. It is equally convincing that such undervaluation was intentional on the part of the ex-county assessors, notwithstanding the affidavits to the contrary. It was hardly to be expected that they would admit that they had intentionally undervalued the property assessed by them, and had not endeavored to assess it at its fair cash value, there-

by acknowledging of record that they had violated their oaths. Nor would I say that in stating that they had not intentionally undervalued * * * they deliberately swore to that which they knew to be untrue, * * *. It is likely that none of them duly reflected upon the full effect of what they were swearing. * * * The fact of uniform undervaluation is so overwhelmingly established and to such a marked degree that it would be a reflection on one's capacity to see things as they are not to hold that the undervaluation was intentional. The real truth crops out from this quarter. One of the ex-county assessors to whom the stereotyped form was sent * * * interlined it so as to make it state that he endeavored to assess property at about 70 per cent of its fair cash value, that if anyone was assessed at less than 70 per cent of its fair cash value it was unintentional, and that no property was ever intentionally assessed by him for less than 70 per cent of its fair cash value. Another * * * put it (stereotyped form) in the waste basket and prepared an affidavit for himself. In it he stated that he assessed all real estate that was on the transfer sheet—that is, all that had been sold during the year just previous to the assessment—at 80 per cent of its purchase price as shown by the records, and all other property was listed by the owner or agent under the oath prescribed by law. And still another * * * added thereto the statement that he tried to value all property fairly and equitably, and that in some instances property was assessed at less than he thought was its fair cash value, but he let it stand because it was assessed in his opinion as other property in the same neighborhood."

The conclusive demonstration not only of under-assessment certainly of 40 per cent or more as well as that the under-assessment by the assessors was intentional, is

the treatment by the assessors of property transferred during the current year. *Such property was always assessed higher than other property for the year next succeeding the transfer, and then restored to its place of under-assessment with other property.* For the year next succeeding transfers, it was assessed at 80 per cent, and for other years at less. Garner, ex-Chairman of State Board of Equalization, says (Rec. 642, p. 216) that the Board equalized at 60 per cent because the property was so assessed in the counties.

He also said (Rec. 642, p. 218) responsive to defendants' question if the assessors had made an agreement to under-assess,

> "I don't think any Assessor confessed to that; but from an examination of witnesses and matters of transfer—for instance, we would have occasion where all the transferred property was shown to be assessed at 80%, and if we would ask the Assessor if he had assessed the rest of the property at that rate, he would admit that he had not, that he had probably attempted to put it at 45% of its real value—that that was what he understood was done in the neighboring counties, what they were assessed at. Many of them admitted that they didn't attempt to assess at more than 40 or 50% of the value of the property. And the Board of Supervisors did the same thing, many of them."

Mr. Garner's whole testimony (pp. 215-218, inclusive) is very instructive.

Some of the witnesses testifying by affidavits (stipulated to be depositions) (Rec. 642, pp. 230, *et seq.*), recite the same fact proved by Mr. Garner as to assessment of

property lately transferred; *e. g.*, Clem Johnson (p. 232), Sam. J. Spalding (p. 233), Herndon Goodin (p. 233), Chas. C. Boldrick (p. 234), C. S. Weakley (p. 235), J. L. Smith (p. 235), Lucien Lindsay (p. 237), S. M. Perkins (p. 237), W. S. Shelton, D. M. Butler, H. C. Miller, B. D. Butler, J. F. Kirkman, J. A. Boone (p. 238), W. D. Pinkston (p. 247), John A. Judy (pp. 250, 251). See also the instances mentioned by the District Court, *supra*. All these witnesses were ex-officers of the counties. Of course, the statements of these witnesses are simply examples illustrating the rule obtaining all over the State, as proved by Mr. Garner. Their acts were necessarily intentional and designed to meet the purpose explained by Mr. Garner, ex-Chairman of the State Board. While, therefore, the local assessors habitually assessed property in their different counties at different ratios of assessed to actual values, their acts are shown to be intentional, not only by the considerations aforesaid but by the consideration that they raised the assessment to 80 per cent of property transferred during the current year and dropped it back to the usual per cent thereafter.

It may, therefore, be assumed that the under-assessment of property throughout the State on an average of 52 per cent was not unintentional; but, inasmuch as the State Board for the years in question, raised such assessments for 1912 only 3.7 per cent, and for 1913 only 1.9 per cent, the under-assessment became intentional with the State Board. Also it was intentional with the county judges, as is above shown.

Authorities on Competency of Evidence on Undervaluation.

That the Federal Census and the reports of the State Boards are competent to establish the facts which we have proved by them is well settled.

The reports of the State Boards are virtually confessions, and *confessions against interest*. Authorities to establish their competency are, therefore, unnecessary.

Possibly the court will take judicial notice of the existence of under-assessment of property throughout the State:

> Cummings v. Nat'l. Bk., 101 U. S. 161, 162.
> R. R. & Tel. Cases v. Board, 85 Fed. (Tenn.) 302.
> Lou. & Nash. R. R. v. Bosworth, 209 Fed. 457, but see Lou. & Nash. v. Bosworth, 230 Fed. 222.
> State v. Barett, 172 Ind. 169, 87 N. E. Rep. 7.
> People v. I. C. R. R., 112 N. E. Rep. (Ill.) 700, 710.

It is unnecessary, however, to invoke judicial notice, because the authorities to the competency of the evidence are ample.

That the Federal Census is competent as well as the reports of the Board, is established by authority.

Greenleaf says, 1 Ev. (15 Ed.), Sec. 483:

> "The facts recorded, while not within the knowledge of the officers, have been ascertained and entered by an authorized and accredited public agent appointed for the purpose and for the benefit of the public. When the particular facts are inquired into and recorded for the benefit of the public, those who are empowered to act in making such investigations

> and memorials are in fact the agents of all the individuals who compose the State; and every member of the community may be supposed to be privy to the investigation and for these reasons it is not necessary that they should be confirmed and sanctioned by the ordinary tests of an oath to entitle them to be received in evidence."

See, also, similar section Redfield's Edition.

See Kirby v. Lewis, 39 Fed. 66; Malaer v. Damron, 39 Ill. App. 572.

This doctrine has been sanctioned by the Kentucky Court in *Bertram* v. *Witherspoon's Admr.*, 138 Ky. 116-119 (127 S. W. Rep. 533), where the question at issue was the age of the deceased ancestor at the time of death, the course of descent depending upon the age of the intestate. The Court held that the school census of the intestate's school district for a number of years was competent, saying, p. 119:

> "In addition to this (Bible record) the school census for a number of years is produced and these all show that Porter was born in April, 1882. The school census is a public record. Parents are required to give in the ages of their children. These reports were made during the life of Thomas Witherspoon and are better evidence now of the date of Porter's birth than the recollection of witnesses as to a date more than 25 years ago."

The principle under consideration seems so obviously sound that the *instant* question might be safely submitted upon the authorities just cited, for the reports of State and Federal Governments are not only the best, but practically the only complete and sufficient evidence obtain-

able; and the State reports are, as aforesaid, confessions and *admissions against interest,* and for that reason also are admissible. Additional authority, however, to the same point is abundant.

Jones says (Evid., Sec. 122, Ed. 1908):

> "*Executive proclamations—regulations of bureaus, official reports of public officers.* The courts have recognized that certain executive proclamations, regulations of bureaus and departments, and *reports of public officers are* of such general notoriety that they may be judicially noticed." Citing President Lincoln's proclamation granting amnesty. (Italics ours.)

As to *admissions against interest,* see Sec. 518.

Wigmore says (3 Evid., Sec. 1670):

> "A report is to be distinguished from a return, as already defined (*ante,* Sec. 1664), in that the latter is typically concerned with something done or observed personally by the officer, while the former embodies the results of his investigation of the matter, not originally occurring within his personal knowledge. * * *
>
> "Now, an inquisition or report, if made under due authority, stands upon no less a favorable footing than other official statements. As a statement made under official authority or duty, it is admissible under the general principle (*ante,* Sec. 1633, 1635)."

Wigmore cites Starkie, Evid., 260, 1824.

Starkie, as quoted by Wigmore, declares:

> "Inquisitions, which are of a public nature, and taken under competent authority to ascertain a matter of public interest, are, upon principles al-

ready announced, admissible in evidence against all the world," etc.

Wigmore discusses the principle extensively; and he says (Sec. 1671, Sub-sec. 7):

> "The *census* is an *inquiry of population*, manufacturers, agriculturists, wealth, and many other cases of sociological *data*, and is made under an express legislative warrant and authority. It is, therefore, admissible under the general principle already considered."

In 16 Cyc., p. 870 (15), it is expounded:

> "FACTS ESTABLISHED BY STATISTICS—*a. Census.* Courts know the facts generally known to have been established by statistics in much the same way and for much the same reason that they know the facts set forth in the almanac. The court can not verify the facts; but where statistics are official, prepared by public officers acting under provision of law, the duty of the court to know the law and recognize the existence of acts done under it stimulates and indorses the court's knowledge of the facts established by such statistics, in which the community shares. *Courts therefore will take judicial knowledge of the results of a census taken under Federal, State or municipal authority. The court will take judicial notice of the population of counties, cities, and towns, and of the approximate rate at which the population of such places increases. Other facts of general interest obtained from the official census will be noticed, such as the amount of capital in the jurisdiction, the form in which it is held,*" *etc.* (Italics ours.)

In *8 Am. Dig. Dec. Ed.* "*Evid.*," Sec. 12, on statistics, a number of cases are collected which hold that courts, even State courts, will take judicial notice of the Fed-

eral census, and *C. & A. R. Co.* v. *Baldridge,* 177 Ill. 229, 52 N. E. 263; *Huntington* v. *Cast,* 149 Ind. 255, 48 N. E. 1025; *Whitley County* v. *Garty,* 161 Ind. 464, 68 N. E. 1012; *Bennett* v. *Marion County,* 106 Iowa 628, 76 N. W. 844; *State* v. *Jackson County,* 89 Mo. 237, 1 S. W. 307; *State* v. *Wofford,* 121 Mo. 61, 29 S. W. 851; *State* v. *Marion County,* 128 Mo. 427, 30 S. W. 103, 31 S. W. 23; *State* v. *Evans,* 166 Mo. 347, 66 S. W. 355; *Kokes* v. *State,* 55 Neb. 691, 76 N. W. 467; *are among the cases cited.*

In *same Digest, Sec.* 51, it is said that, where Judicial memory is at fault, the Court may resort to documents of reference, upon authority of *Keck* v. *Seibert,* 130 Mo. 202, 32 S. W. 670; and that, since the Court may take judicial notice of the time of sunset, it may consult the almanac, upon authority of *Lendle* v. *Robinson,* 65 N. Y. S. 894, 53 App. Div. 140, etc.

In the *same Digest,* Sec. 333 (7), it is said that the Federal census is competent to prove the population of a county, upon authority of *State* v. *Neal,* 25 Wash. 264, 65 Pac. 188, 68 Pac. 1135.

Also, said that the U. S. Weather Bureau reports are competent to show the state of the weather, although kept at a place ten miles distant, such appearing to be the nearest place of keeping such record. *Mears* v. *N. Y., N. H. & H. R. Co.,* 75 Conn. 171, 52 Atl. 610, 56 L. R. A. 884, 96 Am. Stat. Rep. 192. See also, *Ky. Dig.* (*Evid.,* Sec. 333.)

In *Wasson* v. *Indianapolis,* 107 Ind. 206, 8 N. E. Rep. 97, a case involving the right to make certain deductions from the assessed value of certain kinds of property as-

sessed for taxation, it was held that the courts would take judicial notice that the moneyed capital from which the taxpayer might so deduct his debts was *a material portion of the whole moneyed capital* of the State.

In *Russell* v. *Poor,* K. C. C. A. (Mo.), 119 S. W. Rep. 433, it was held that the court would take judicial notice of the last census, showing the population of Kansas City to be less than 300,000. The question arose on the agent's right to a commission upon land sold because his authority was not in writing as required by statute governing such agencies in cities of under 300,000 inhabitants. The plaintiff had not proved the population, and the Court said (p. 434):

> "He was not required to make such proof as the court was bound to take judicial cognizance of the last census which shows that the city has less than the number mentioned."

As aforesaid, inasmuch as the court takes judicial notice of the facts evidenced by such published documents or instruments as the Federal census and the court can not know such facts except from the Government's reports, the Court must consult such reports, or, in other words, take judicial knowledge of their contents by way of evidence on the point involved.

In *State* v. *Candland* (Utah), September 22, 1909, 104 Pac. 285, on a question of the amount of income from the sale of University lands for the years 1909 and 1910, the Court held that it might take judicial notice of the amount of such income as estimated in the last biennial report of the Board of Regents of the University. The

University was the applicant for a mandamus against the State Board of Land Commissioners to require them to comply with the provisions of a statute. The Court said (p. 293), that, while the naked legal title to the buildings might be vested in the corporation, it was nevertheless held in trust for the State, which was obliged to hold and use, and maintain it for school purposes; that the State must also provide the necessary funds, and that the State trust funds were, and perhaps always would be, insufficient for the purpose, and further said:

> "According to the last biennial report of the Board of Regents of the University of Utah to the Governor, *and of which we are authorized to take judicial notice,* the estimated proceeds from all land sales now amount to $22,000.00 annually, or to $44,000.00 for the years 1909 and 1910." (Italics ours.)

In *State* v. *Marion County,* 128 Mo. 427, 30 S. W. 103, 31 S. W. 23, the proceeding was a mandamus, and the question arose as to the class in which the county in question belonged, and the Court said (30 S. W. 104) that "under repeated rulings of the Supreme Court it should be considered settled that judicial notice will be taken of the last published official census of the United States for the purpose of determining the population of cities of Missouri. That the trial Court was, therefore, right in this case in ruling that Marion County came within the class of counties mentioned in the proviso, for the last United States census shows, and all parties to the cause concede, that the inhabitants of that county do not exceed 50,000 in number."

The decision was affirmed, and opinion adopted as the opinion of the court in *Banc*, in 31 S. W. Rep. 23.

In *Flora* v. *Anderson*, 75 Fed. 217, 231, on a question of pedigree, it was held that "abstracts of the United States census official returns as to the families of James W. Flora, the foster father of complainant, and John W. Flora, the complainant, duly certified from the Department of the Interior for the several censuses from 1820 to 1890, both inclusive," were competent. The Court said, also:

> "The census returns show that the age of John W. Flora, complainant, was always computed as if he had been born in the year of 1820; that such documents, being official registers, are admissible in evidence in so far as they contain statements as to matters which the law requires should be inquired into, reported upon, and then recorded, see 1 Greenl. Ev., Sec. 483, and Steph. Dig. Ev., Art. 34."

The Court, also, remarks that the statutes require each census enumerator to investigate and record the particular matters shown in the abstract for that census; that where practicable, investigation should be made by inquiring from the head of the household in question; that the records were, therefore, not simply public records made for the express purpose of ascertaining and preserving proof of the facts there contained, but were records made by an officer under official oath of declarations as to pedigree by persons whose declarations were competent proof upon that subject.

The Law on the Right to Equalization.

We now approach consideration of the rule governing the rights of taxpayers deprived of the equal protection of the laws by the undervaluation of other taxpayers' property.

We have here no concern with the rule of *Bell's Gap R. Co.* v. *Penn.*, 134 U. S. 232, and *Merch., etc., Bank* v. *Penn.*, 167 U. S. 464, for while a State may classify property for taxation and discriminate between classes without violating the Federal Constitution it must treat all taxpayers in the same class alike (*Raymond* v. *Tract. Companies*, 267 U. S. 20), *and in Kentucky all taxpayers are by the State Constitution constituted one class for uniform taxation, Sec. 174, post.* To deny to the Railroad Companies, therefore, such equalization as to cause their property to be assessed at no greater *per cent* of its value than other property is assessed, violates as well the Federal as the State Constitution. The principle involved and its application are so elaborately and ably expounded by the District Court in *Lou. & Nash. R. R.* v. *Bosworth*, 209 Fed. R. 446, *et seq.*, and *Same* v. *Same*, 230 Fed. R. 206, *et seq.*, that it might almost seem supererogatory to discuss it, but we shall, hoping to satisfy any doubt on the part of the Court, nevertheless review the authorities.

The State Constitution is emphatic (Sec. 174) that,

> "All property, whether owned by natural persons or corporations, shall be taxed in proportion to its value, unless exempted by this Constitution and all corporate property shall pay the same rate of taxa-

tion paid by indivdual property". Etc. (See appendix.)

Nothing could be plainer, therefore, than the positive command not only to impose "the same rate of taxation" upon corporate as upon individual property, but to tax it "in proportion to its value". The authorities applicable are numerous and convincing, and abundantly establish the rule for which we contend.

The command of Sec. 172 that "all property * * * shall be assessed for taxation at its fair cash value, estimated at the price it would bring at a fair voluntary sale;" is not inconsistent with Sec. 174, but only an assistant to its execution. The primal and vital provision is for taxation of property "in proportion to its value," for it matters little whether property be assessed at one per cent of its value, or another, provided only that all property be assessed at the same per cent, for the sum to be raised by taxation can be regulated by the rate of taxation. The command, therefore, of assessment at "fair cash value" is subordinate to the requirement of uniformity, and but indicates the proper method of obtaining it.

Indeed, the command to assess at "fair cash value" has no mission except as a *criterion* of uniformity. It has no intrinsic excellence, and some states tax upon fractions of, rather than upon the whole of, the value of the property, *e. g.*, Illinois $\frac{1}{3}$, Nebraska $\frac{1}{5}$, Alabama $\frac{3}{5}$; the criterion of fair cash value, therefore is, like any other criterion, solely for the purpose of attaining uniformity. This is well explained in *Barz* v. *Board*, 113 Iowa 563,

111 N. W. 41, 42, where an over-assessed landowner complained and the Court said:

> "The plaintiff does not claim that his property is not worth the amount for which it is assessed, but does claim, and the court so found, that it was so assessed in comparison with other property in that taxing district as to be subjected to an unfair and inequitable proportion of the public burdens." Etc.,

as hereinafter quoted; and concluded,

> * * * if we are compelled to hold that he against whom this discrimination is made is without legal ground of complaint because it appears that his property is worth its assessed valuation, we shall have made the very provision which was intended to secure equality the effective instrument for enforcing inequality."

This forcible exposition of the true principle is convincing.

This exact question, but upon insufficient proof, came before this Court from the District Court in *Coulter* v. *Lou. & Nash. R. R. Co.*, 196 U. S. 599, and the judgment was reversed upon the ground that the under-assessment was not shown to be intentional or pursuant to a scheme. This Court said, as quoted, *supra:*

> "From a consideration of different kinds of evidence the circuit court reached the conclusion that the county assessors had systematically and intentionally undervalued the property assessed by them * * * (p. 607). The reasoning is careful and elaborate and can not be read without an impression that probably it is correct to the extent of establishing a general undervaluation of land."

Again (p. 608):

"The question is whether such a case has been made out, and we may assume for purpose of decision, without deciding, that, if we otherwise agreed with the railroad company's contention, the injunction might be granted, although the franchise was valued as the law required in every respect except in the proportion which the assessment bore to the other valuations. The decisions are not agreed upon this point."

Again (p. 609):

"Looking first at the assessment of the franchise, there is no such certainty that it was made on a different scale of values from that adopted elsewhere, as would warrant an attack upon it under the Fourteenth Amendment, even if otherwise that attack could be maintained * * * It is not contended that a mere undervaluation would be enough. It is admitted that it must have been systematic and intentional. There is, no doubt, a natural inclination to think such an undervaluation probable when it is suggested. But what is the proof? * * * (p. 610) Inequality, we repeat, is nothing, unless it was in pursuance of a scheme. To make out that scheme the anomalous course was followed of putting members of a tribunal established by law upon the witness stand to testify to the operations of their minds in doing the work entrusted to them. * * * *But the prevailing testimony was that no such scheme was entertained.*" (Italics ours.)

It is obvious that the only ground for denying relief in the Coulter Case was that the taxpayer's claim that the under-valuation was systematic and intentional had not been established by the evidence.

Our point, however, is concluded in the taxpayer's favor in *Raymond* v. *Tract. Companies,* 207 U. S. 20, 35.

While there are cases contrary (Lou. R'y v. Com., 105 Ky. 710, 49 S. W. 486; Ray v. Armstrong, 140 Ky. 800) the overwhelming weight of authority sustains our contention; and the principle is so clear and satisfactory as to defy negation.

The District Court said (230 Fed. 208):

> "But, if the Constitution of the state forbids unequal taxation, the legislative department in enacting tax laws has no right to make a discrimination, and, as stated, if in such case it does discriminate, I see no reason why its action would not be in violation of the Fourteenth Amendment as well as of the state Constitution."

Of course, it was the Executive Department and not the Legislature that violated the Constitution in the *instant* cases, and this the District Court recognizes, saying (p. 206):

> "The prohibition thus being against those representing the state as officers or agents, and not the state itself, it is against all such persons. It is not limited to the legislative department of the state government. It includes the executive and judicial departments as well,"

citing numerous decisions of this Court.

In *R. R. and Tel. Cos.* v. *Board* (Tenn.), 85 Fed. Rep. 302 (Clark, J.), the Court upon the authority of the *Santa Clara case* and others said:

> "* * * The makers of American forms of constitutional government were by recent lessons fully

mindful of the teaching of history that the power to tax is the power to destroy, and that oppressive exactions were generally made under the guise of taxation. * * * The lapse of time, and the absence of unconstitutional and forced tribute, may diminish our appreciation of the wisdom of the constitutional principle; but neither lapse of time, nor the absence of a remindful lesson, will diminish its value or importance as the constitution's peaceful and wisely-provided shield against discrimination and destructive exaction under color of a tax burden. * * * An unequal and unjust exaction is no longer a tax, but confiscation."

We recognize, as did the District Court, that sporadic and accidental under-assessment of other property would not ground a proceeding for relief under the Fourteenth Amendment, but that where a taxing body of the State (or municipality) deliberately assesses a class of taxpayers at *100 per cent* while the same body or a coordinate body of the State assesses the great bulk of property belonging to other taxpayers at a greatly reduced per cent—*in this instance 52 per cent*—intentionally and uniformly, the former is deprived of the equal protection of the laws vouchsafed by the Fourteenth Amendment. This rule is well stated by Gray, Circuit J., in *Cent. R. Co. of N. J.* v. *Jersey City*, 212 Fed. 76, 79, 80, affirming case in 199 Fed. 237, 242.

The Court said (pp. 76, 79, 80):

"After a careful examination of the evidence disclosed in the record, we have no difficulty in approving the findings of fact made by the court below in its decree, to the effect that for the years 1899 to 1907, inclusive, the taxing authorities of the

city of Jersey City assessed the property of the complainant described in the bill of complaint, at or about its true value, and during the same period *designedly, intentionally, habitually and systematically* assessed all other property in said city, except railroad property at 70 per centum or less of its true value and thereby *intentionally, habitually and systematically* discriminated against the said property of the complainant, to the extent of at least 30 per centum of its true value. Apart from the presumption in favor of a finding of fact by the court of first instance, we are independently of the opinion that the evidence abundantly sustains this finding." (Italics ours.)

Also, the Court said, p. 81:

"The gravamen of the complaint, however, as set forth in the bill, is not as to the values determined by these boards for the purpose of assessment, but that, in spite of such determination, the local assessors have intentionally and systematically assessed all other property within the jurisdiction of the defendant upon a basis of 70 per cent or less of its true value, and thus imposed upon complainant an undue and unjust share of the common burden of taxation."

In *Lacy* v. *McCafferty, etc.*, 215 Fed. (C. C. A. 8th Circ.) 352, the rule for which we contend was asserted and applied upon authority of numerous cases, but the trial Court's finding of facts against the taxpayer was upheld,—the court deciding that its conclusions would not be disturbed unless an obvious error had intervened in the application of the law, or a serious mistake made in the consideration of the evidence.

The principle involved seems almost too plain for debate, the only trouble being in its application, and in the reconciliation of provisions like Sec. 172 and Sec. 174 of the Ky. Constitution. It is inconceivable that the equal protection of the laws is not denied by assessing some members of a class at *full value*, others at *half value*, and still others at *quarter value*. To enforce such unequal assessment is as essentially tyrannical and despotic as to exact arbitrary amounts. Such exactions are not taxation, "but confiscation" (85 Fed. 302, *supra*). This was well expounded as early as Mr. Justice Field's decision in *Santa Clara County* v. *Sou. Pac. R. Co.*, 18 Fed. 385, 394, *et seq.* (1883), affirmed upon another point, 118 U. S. 394, 417, and many times reaffirmed. He said (p. 395):

> "* * * Today railroad companies are under its ban (the will or caprice of the State), and the discrimination is against their property. Tomorrow it may be that other institutions will incur its displeasure."

Again (p. 398):

> "* * * * This protection attends everyone everywhere, whatever be his position in society or his association with others, either for profit, improvement, or pleasure. * * * It is the shield which the arm of our blessed government holds at all times over every one, man, woman, and child, in all its broad domain, wherever they may go and in whatever relations they may be placed. * * *"

Again (p. 399):

"Unequal taxation, so far as it can be prevented, is, therefore, with other unequal burdens, prohibited by the amendment. There undoubtedly are, and always will be, more or less inequalities in the operation of all general legislation arising from the different conditions of persons from their means, business, or position in life, against which no foresight can guard. But this is a very different thing, both in purpose and effect, from a carefully devised scheme to produce such inequality; or a scheme, if not so devised, necessarily producing that result. Absolute equality may not be attainable, but gross and designed departures from it will necessarily bring the legislation authorizing it within the prohibition. The amendment is aimed against the perpetration of injustice, and the exercise of arbitrary power to that end. The position that unequal taxation is not within the scope of its prohibitory clause would give to it a singular meaning. It is a matter of history that unequal and discriminating taxation, leveled against special classes, has been the fruitful means of oppressions, and the cause of more commotions and disturbance in society, of insurrections and revolutions, than any other cause in the world."

In *Cummings* v. *Merch., etc., Nat'l Bank*, 101 U. S. 153, 158, this Court quoted from the Ohio Court as follows:

"* * * taxing by a uniform rule requires uniformity, not only in the *rate of taxation*, but also uniformity in the *mode of the assessment* upon the taxable valuation. Uniformity in taxing implies equality in the burden of taxation, and this equality of burden can not exist without uniformity in the mode of the assessment, as well as in the rate of taxation."

Again, in the same case this Court said (p. 157):

"Independently of this statute, however, we are of opinion when a rule or system of valuation is

adopted by those whose duty it is to make the assessment, which is designed to operate unequally and to violate a fundamental principle of the Constitution, and when this rule is applied not solely to one individual, but to a large class of individuals or corporations, that equity may properly interfere to restrain the operation of this unconstitutional exercise of power."

The District Court notes (230 Fed. 213) this Court's observation (in the Cummings case) that the assessment of real estate at less than true value was not "limited to the State of Ohio or to part of it," that notwithstanding statutory requirements of uniformity and of assessment at actual value, "it is a matter of observation that in the valuation of real estate the rule is habitually disregarded," and that "it is believed that the valuation of real estate for the purposes of taxation rarely exceeds half of its current salable value." The doctrine of the *Cummings Case* is reaffirmed by this Court in the *Raymond Case* hereinafter noticed.

In *Nash., C. & St. L. R'y.* v. *Taylor*, 86 Fed. 168 (Clark, J.), where relief was granted against discrimination in assessment, the right was claimed solely under the Fourteenth Amendment. The case was approved in *Raymond* v. *Trac. Co.*, and is thereby given greater authority.

In *Taylor* v. *Lou. & Nash.*, 88 Fed. 350, an injunction against certification by a State Board of a discriminatory assessment was granted. The Tennessee Constitution, like Kentucky's, required uniformity, but did not require assessment at actual value; but the Statutes did. The discrimination against the Company was exactly like

that in the *instant* cases except in amount, being less. The Court (Taft, J.), upon authority of the *Cummings Case*, granted relief, saying (p. 371):

> "It has been pressed upon us that no such preconcert of action by the assessing officers, and no such uniform rule of undervaluation, have been shown in this case as appeared in the Cummings Case, and that upon these circumstances the Cummings Case turned. We have already found, from the evidence, that there is an intentional undervaluation of property in each county, and that this is uniform as to all real and personal property, and results from a clear understanding between the assessors and county boards of equalization, who have a common motive for the reduction. More than this, it is clearly shown that the state board of assessors and equalizers in 1896 intentionally equalized all real estate in the state at 75 per cent of its true value for taxation of the year 1897. Could preconcert be clearer than this?"

Referring to the claim that the undervaluation was not intentional the Court said (p. 372):

> "* * * before equity will relieve in such a case, it must appear that the assessing officers whose acts of undervaluation create the unjust burden must intentionally and habitually violate the law, by assessing property at a less valuation than that which they know to be its true value;".

Again (p. 373):

> "* * * equity will not relieve against an assessment merely because it happens to be at a higher rate than that of other property; that such inequalities, due to mistake, to the fallibility of human judgment, or to other accidental

causes, must be borne, for the reason that absolute uniformity can not be obtained: that, in other words, what may be called 'sporadic cases of discrimination' can not be remedied by the chancellor. He can only interfere when it is made clear that there is, with respect to certain species of property, systematic, intentional, and unlawful undervaluations for taxation by the taxing officers, which necessarily effect an unjust discrimination against the species of property of which the complainant is an owner. The reason for the distinction is obvious. The occasional and accidental discriminations are inevitable in every assessment, and are not likely to continue, because not the result of an illegal purpose on the part of any one."

And again (p. 374):

"If any board which is an essential part of the taxing system intentionally, and therefore fraudulently, violates the law, by uniformly undervaluing certain classes of property, the assessment by other boards of other classes of property at the full value, though a literal compliance with the law, makes the whole assessment, considered as one judgment, a fraud upon the fully-assessed property. And this is true although the particular board assessing the complainant's property may have been wholly free from fault of fraud or intentional discrimination."

The Court dealt with the dilemma prescribed in the *instant* cases by Sec. 172 and Sec. 174 of the Constitution, saying (p. 365):

"* * * to enjoin the enforcement of the prescribed method of assessment as to one species of property, when there is a departure from it as to all others, if the injunction secures uniformity as to all, is not so great a violation of the method really pre-

> scribed as that involved in a continuance of the existing conditions, and the denial of relief to the injured taxpayer. The court is placed in a dilemma, from which it can only escape by taking that path which, while it involves a nominal departure from the letter of the law, does injury to no one, and secures that uniformity of tax burden which was the sole end of the constitution. To hold otherwise is to make the restrictions of the constitution instruments for defeating the very purpose they were intended to subserve. It is to stick in the bark, and to be blind to the substance of things. It is to sacrifice justice to its incident."

The substance of this language of Judge Taft's is strikingly similar to that of the Supreme Court of Iowa quoted below.

In *Lou. Trust Co.* v. *Stone*, 107 Fed. 305 (Day, J.)—cited as authority in *Raymond* v. *Tract. Co.*—a case similar to the *instant* case, and arising in Kentucky, the relief sought was under the Fourteenth Amendment. The Court said (p. 305):

> "* * * It may be conceded that, if the allegations of the bill are made out, there exists in respect to the property of complainant, and others similarly situated, a systematic, intentional, and illegal undervaluation of other property by the taxing officers of the state, which necessarily effects an unjust discrimination against the property of which the plaintiff is the owner, and a bill in equity will lie to restrain such illegal discrimination, and that in such cases federal jurisdiction will arise because of the equal protection of the laws guaranteed by the fourteenth amendment."

The foregoing authorities would seem to suffice to establish a principle so clear even without authority, but

further illustration of the principle will be served by citation in this connection of decisions in state courts.

In *Iowa Cent. R'y. Co.* v. *Board*, 157 N. W. 731—Iowa—where the owner of a bridge extending from Iowa to Illinois was assessed at 66.73 per cent of real value while lands (constituting 86.2 per cent of the entire property of the State) were assessed at 37.55 per cent of true value, and the total property of the State was assessed at 40.6 per cent, on a complaint of discrimination and violation of the Constitution of Iowa requiring that "taxes must be uniform" relief was granted, the Court saying (p. 732):

> "* * * The paramount object which the law seeks to insure in distributing the burdens of taxation is equality, and, although the property of a taxpayer is assessed at less than its true value, nevertheless, if it is assessed higher proportionately than other property, he has a just cause of complaint. It is hardly necessary to cite authorities upon this proposition, but see * * *: Barz v. Board of Equalization, 133 Iowa 563, 111 N. W. 41: * * *.
>
> "Appellant contends that the facts in the case at bar bring it within the rule laid down in the cases before referred to, and that, although it concedes that the value placed upon its property by the lower court, for assessment purposes, is less than the actual value thereof, nevertheless it is aggrieved and entitled to a further reduction in such valuation, because it is not assessed upon the same basis as other property, and because the assessed valuation as fixed by the court is higher proportionately to the true valuation than the assessed valuations of other property.
>
> "As stated, appellant contends that as to lands the average percentage which the assessed value

is of the true value is 37.55, this being the percentage which the total assessed value of all the tracts is of the total true value of all the tracts, and that the percentage for all property, including farm lands, other real estate and personal property, is 40.6 per cent."

In *Lehigh, etc., Co.* v. *Luzerne County*, 225 Pa. 267, 74 Atl. 67, 68, a complaint by a coal company of over-assessment, the Court said:

"It is within the power of the local authorities to correct many of the evils complained of by requiring all real estate to be assessed at its full market value, and if this be done, no taxpayer could then justly complain that he is required to bear more than his porportionate share of the public burdens. Most of the controversies arise in this class of cases because this simple and effective remedy has not been applied. When the attempt is made, as it too frequently is made, to assess one kind of real estate at full value, another at half value, and another at third value, or even less in some instances, the cry of unjust discrimination is raised, and resistance or protest surely follows. Such a method of valuation is repugnant to the constitutional provision requiring uniformity. A uniform standard of valuation must be adopted, and a uniform tax rate must be applied. This is what the framers of the Constitution meant, and in aid of this principle the Legislature in 1889 (* * *) provided that the courts on appeal shall have due regard for the valuation of other real estate in the same district. Actual market value is the proper standard to ascertain assessable value, and the Acts of April 5, 1834 (P. L. 511) and July 27, 1842 (P. L. 441), fixed the standard of valuation for real estate at the price it would bring at a bona fide sale after public notice. * * * This is still the law, but in practical application it is scarcely ever enforced. The framers of the Constitution no doubt

had this thought in mind when the principle of uniformity was written into the fundamental law. All real estate should be assessed at its actual market value, but it must be assessed at a uniform standard of valuation throughout the district, even if that valuation is below market value."

The Court further said that it was the judicial duty to enforce uniformity and that (p. 68):

"* * * The difficulty of determining the ratio of actual to assessed value was adverted to * * *, but it is not a sufficient reason for denying appellant the right to have its land assessed on the same basis of valuation as other lands in the same district are assessed. These are difficulties with which courts are frequently confronted, and must be met and solved with an eye single to the legal rights of the parties. When the record is remitted, the court below must determine whether the evidence already offered is sufficient for the purpose of ascertaining this ratio. If it is, and this is largely and primarily a question to be determined there, the average ratio can be ascertained from the facts already established."

In *Randell* v. *City*, 28 Atl. 523, 63 Conn. 321, relief was granted plaintiff by reduction of his assessment by 50 per cent, the Court saying:

"* * * There are two ways in which a taxpayer may be wronged in levying taxes. An assessment may conform to the statute generally, and the individual may be assessed in excess of the statutory requirement. A wrong of that description is easily redressed. But when the town disregards the statute, and establishes a rule of its own, assessing the property at one-half of its actual value, and then assesses an individual at the full value of the prop-

erty, while the injury is the same, the application of the remedy becomes more complicated. Practically, the only way to redress the wrong is to reduce the assessment, and that makes the court seem to disregard the statute; while, if the wrong is not redressed, there is a denial of justice, and the court practically ignores the statute giving an aggrieved party an appeal, and practically ignores the statute which provides that 'said court shall have power to grant such relief as shall to justice and equity appertain.' Gen. St., §§3831, 3863. Thus we are in a dilemma. If we choose one horn of it, a public statute is violated,—not so much by the court as by the town,—but by an apparent approval of the court as to one individual; and that by an express command of another statute, and by the dictates of justice. If we take the other horn, the court itself violates a remedial statute, and becomes in a measure a party to the wrongdoing. Under the circumstances, we do not hesitate to choose the former, and to redress the wrong. We are not without precedents for this."

In *Ex-parte, Fort Smith, etc., Bridge*, 62 Ark. 461, 36 S. W. 1060, a bridge across the Arkansas River was assessed one-half in Crawford County. It was fairly worth $250,000. The Assessing Board generally endeavored to equalize all real estate at *50 per cent* of cash value. The Constitution required valuation "making the same equal and uniform throughout the State" and that no species of property should be taxed higher than another. The Court, upon the authority of the *Cummings Case, supra*, 101 U. S. 153, and *Cooley Tax.*, 2nd Ed., pp. 748, 751, held the taxpayer entitled to equalization at *50 per cent*, and required the assessment lowered, accordingly, saying (62 Ark. 467, 36 S. W. 1062):

"How, then, was the county court to afford relief to appellant? The only relief it could have afforded was to reduce the valuation, so as to make it conform to the standard adopted in the valuation of other real property in the county or the average valuation of such property. Why should not this relief be granted? * * * By granting it a constitutional right will be enforced and by denying it will be withheld."

Probably the most instructive of all the state cases is *People* v. *Ill. Cent. R. R. Co.*, 273 Ill. 220, 112 N. E. Rep. 700 (1916), the great Illinois Central Charter Tax Case.

While Illinois Statutes provide for assessment at fair cash value estimated at the price at a voluntary sale (as in Kentucky) the assessment on which the tax rate is extended is fixed at 33⅓ *per cent* (Hurd's Rev. Stat., 1911, Sec. 4, Chap. 120), *but property really is assessed at 70 per cent or less of full value and the tax rate extended on one-third of such value.* (Similar situations exist in Iowa, Nebraska and Alabama, Iowa Code Ann., 1907, Sec. 1305; Neb. Rev. Stat., 1913, Sec. 6300; Ala. Gen. Acts, 1915, Act 464, Sec. 9.)

The Illinois Supreme Court (112 N. E. 710, Syll. 7), allowed the Railroad Company equalization, saying that the uniform practice of assessing at not exceeding 70 per cent of full value was established by the evidence, and that although the statute prior to 1898 required assessment at actual value of property, it was "a matter of common knowledge that before that act was passed property was not usually assessed at its full value. This court has always taken notice of that practice as being

long in vogue, unchallenged, and recognized by the public authorities. (Citing authorities.)"

Again (pp. 710, 711):

> "Counsel for the state insist that, regardless of these statutes, and regardless of the former practice that existed previous to the passage of these acts, the property of appellant should be assessed at its full cash value for these state taxes. With this we can not agree. * * *
>
> "* * * Manifestly, however, in view of the issues raised in this case, it is the duty of the court to find whether the auditor should extend the assessment for the state tax upon the full cash value, or only upon one-third of the equalized value. This being an ordinary state tax, as already stated, the provision of the Constitution of 1848, and of the present Constitution, that the tax should be levied by valuation, 'so that every person and corporation shall pay a tax in proportion to his, her or its property,' must control in levying this tax."

In its discussion of the *instant* question the Court quoted extensively from authorities, State and Federal, and from its own prior enunciation the following (p. 711):

> "* * * Regarding uniformity as the vital principle, the dominant idea of the Constitution, where can the power reside to produce its opposite? Where is the power lodged, in view of this principle, to compel A to pay, on his land or personal property, of no more value than the same kind of property belonging to B, 40 per cent more taxes than are assessed against B? We affirm such a power nowhere exists, and if it did it would be so revolting in its exercise to the lowest sense of justice with which our species is imbued as to justify any and every lawful expedient for relief against it."

After review of authorities the Court concludes (p. 712):

> "To assess implies more than to fix the full valuation at a given rate. It means to impose a tax according to some method or upon a basis of assessed valuation which may be provided by law and which does not violate the mandate of the Constitution that every person and corporation shall pay a tax in proportion to the value of his or its property."

The foregoing authorities, Federal and State, including a leading case from this Court, seem to settle every phase of the proposition for which we contend, but no review of authorities would be complete without special reference to *Raymond* v. *Traction Companies*, 207 U. S. 20, for in that case this court granted exactly the relief for which we contend, and which was granted by the District Court. The suit was to enjoin City Officers from enforcing an assessment which the Taxpayer claimed denied to it the equal protection of the laws, and due process. The questions arose "by reason of the provisions of the constitution of the State of Illinois and certain sections of its tax statutes" (p. 21).

The State Constitution provided for assessment "in proportion to the value of" property. Statutes provided that land should be "valued at its fair cash value estimated at the price it would bring at a fair voluntary sale" (p. 21). So, there were all the features of the *instant* cases. Personal property generally was required to be similarly valued, and the capital stock of Companies, with certain exceptions, was required to be valued by the State Board so as to determine the fair cash value of

such stock, including the franchise over the assessed value of the Companies' tangible property, etc. The Board of Equalization was the Assessor. A valid assessment was made by the State Board at full value reaching $3,000,000 above the value of the tangible property, and the Taxpayer paid taxes on one-fifth thereof, $600,000, as required by Illinois law.

Afterward Taxpayers sued the Board to compel it to make another, or different, assessment against the Company. Application was made while the Board was in session, and before its final action on appellee's assessment. A judgment against the Board was entered, after it had made the assessment, requiring it to convene and assess appellee's capital stock, "so as to ascertain and determine * * * the fair cash value of its capital stock," etc. The mandamus was granted upon the ground that the first assessment was fraudulent and, consequently a nullity. The Board acted under the mandamus, and under its construction of the requirements of the mandamus as to items of the assessment.

> "* * * At this time and for years previous thereto all property, real and personal, corporate or individual, throughout the State, as well as in Cook County, had been assessed at not to exceed 65 or 70 per cent of its fair cash value, and one-fifth of that per cent was the amount upon which the tax was laid. This assessment, however, was not so made, but one-fifth of the full value was assessed," etc. (p. 26).

The Tax Collector was bound to certify to various officers, so that a suit against each to recover back sums

paid him would have been necessary. Discrimination in favor of other similar corporations was alleged in the Bill of Complaint.

The injunction, as in the *instant* cases, was granted the Taxpayer upon payment of a sum fixed by the Trial Court supposed to be a fair sum to be paid. This Court in asserting the existence of the remedy prayed for, on the authority of *Lou. Trust Co.* v. *Stone*, 107 Fed. 305, *supra*, and three decisions of this Court, said (p. 36):

> "The case before us is one which the facts make exceptional. It is made entirely clear that the board of equalization did not equalize the assessments in the cases of these corporations, the effect of which was that they were levied upon different principle or followed a different method from that adopted in the case of other like corporations whose property the board had assessed for the same year. It was not the mere action of individuals, but, under the facts herein detailed, it was the action of the state through the board. There is here no contention of illegality simply because of assessing the franchises of these corporations at a different rate from tangible property in the State, which the State might do (citing Coulter case), but it is asserted that the board assessed the franchises and other property of these companies at a different rate and by a different method from that which had been employed by the board for other corporations of the same class for that year. The result is an enormous disparity and discrimination between the various assessments upon the corporations. The most important function of the board, that of equalizing assessments, in order to carry out the provisions of the constitution of the State in levying a tax by valuation, 'so that every person shall pay a tax in proportion to the value of his, her or its property,' was, in this in-

> stance, omitted and ignored, while the board was making an assessment which it had jurisdiction to make under the laws of the State. This action resulted in an illegal discrimination, which, under these facts, was the action of the State through the board."

This Court, after reviewing *Barney* v. *New York*, proceeded to review *Cummings* v. *Bank, supra*, as an authority for its decision, saying that the facts were similar, and concerning the Cummings case concluded (p. 38):

> "* * * It is not a question of mere difference of opinion * * *. Although the law itself may be valid and provide for a proper valuation, yet if, through mistake on the part of the State, through its board of equalization and while acting as a *quasi*-judicial body, the board erred in the method to be pursued in relation to the corporations now before us, the mistake is one which may be corrected in equity."

In *First Nat'l Bank* v. *Albright*, 208 U. S. 548, the principle requiring equalization was applied to the assessment of a National Bank, this Court (Holmes, J.) saying (p. 552):

> "We assume that it would be invalid none the less if disguised as a tax on sixty per cent of the par value, if other moneyed capital was uniformly and intentionally assessed at one-third of its actual value and if sixty per cent of the par value of the bank shares was more than one-third of their actual value. Accidental inequality is one thing, intentional and systematic discrimination another. See further *Raymond* v. *Chicago Traction Co.*, 207 U. S. 20." See also *Johnson* v. *Wells Fargo*, 239 U. S. 234.

Circumstantial review of the foregoing decisions of this Court, with which it is so familiar is unnecessary; and certainly if any questoin can be regarded settled by authority, the question under review is certainly so settled. The principle involved, however, is as plain as it is well settled. To assess property at different percentages of value is as discriminatory and arbitrary as to assess at different tax rates. Equally plain is it that to insist upon the discrimination, or a denial of equality, because of a statutory requirement of assessment at a fixed per cent of value, simply invents an excuse, and a very poor excuse, for discrimination, for as pointed out by Judge Taft in the Taylor Case, and by the Iowa Court in the Barz Case, *the requirement of assessment at fair cash value was nothing but an expedient to insure uniformity of assessment.*

The contention sometimes made that relief ought to be denied a Taxpayer over-assessed because there are, or may be, other taxpayers also over-assessed, is clearly as fallacious as the contentions just reviewed, because to admit it would, *first*, enable assessors to close the courts to a Taxpayer demanding Constitutional rights by imposing upon other taxpayers the same wrongs complained of—an easy expedient to rob a person of his Constitutional liberties; and, *secondly*, other taxpayers similarly wronged may seek like redress. As it, therefore, appears from judicial language quoted, *supra*, there is virtually no remedy but to reduce the illegal assessments. An attempt to raise all the other assessments would be chimerical, because of their multitude and no

sufficient machinery. Inasmuch, therefore, as any taxpayer intentionally over-assessed may appeal for relief, his failure so to do does not diminish the rights of his fellow-sufferer complaining.

To what per cent then of assessment must the illegal assessment be reduced; not to the next lowest, because his might, on similar suit, be next reduced to a percentage below his, and so on; not, however, to the lowest, because such course is unnecessary, the over-assessed Taxpayer being entitled only to an assessment equal to the average, for it is the average assessment at the fixed rate which must yield the taxes required by the State. The authorities cited, *supra,* are in accord with this doctrine.

The contention that the State Board has a right to deprive a person of his Constitutional rights because required by Statute to assess at actual value when it does not so assess the great bulk of property which is underassessed, has, as pointed out by the District Court (230 Fed. 216) certainly no force whatever; and the reasoning in *Lou. R'y. Co.* v. *Com.,* 105 Ky. 710, and *Ray* v. *Armstrong,* 140 Ky. 800, to the contrary, is sufficiently exploded by what is said *supra,* for a State forbidden to deny the equal protection of the laws certainly can not successfully evade the Federal Constitution by confiding assessment of property to co-ordinate Boards instead of a single Board, so that one Board may discriminate against one class of Taxpayers assessed by it in favor of another more favored class assessed by other Assessors. Constitutional guarantees would be worth little if they could be destroyed with such facility.

V.

Wrong Methods of Assessment.

The following are methods which the Court declared beyond its corrective powers. Undoubtedly the defendants are in a sense judges of values. Their acts in assessing are somewhat analogous to those of a jury; but are not invulnerable even when strictly within the limits of their powers in case of fraud or adoption of a fundamentally wrong method of assessment. *Chicago, B. & Q. R'y. Co.* v. *Babcock, etc.*, 204 U. S. 585, 596, *etc.* What is a fundamentally wrong principle within the meaning of the rule in question? Undoubtedly, violation of constitutional rights fulfills the definition, but other things are also included. Certainly, departure from statutory directions for assessment constitutes a fundamentally wrong principle, *Hager* v. *Amer. Surety Co.*, 121 Ky. 791, 801, 90 S. W. Rep. 550; *James, Auditor,* v. *U. S. Fid., etc., Co.*, 133 Ky. 299, 117 S. W. 406.

Why, then, does not the adoption of 6 per cent for capitalization of earnings when 7½ or 8 per cent is necessary to realize a regular 6 per cent return; or the selection of the highest instead of the average market price of stocks and bonds during the past year as a *criterion* of value; or the capitalization of a single and unusual year's earnings instead of an average number of years' constitute fundamentally wrong principles of assessment? Undoubtedly, such methods are obviously grossly unjust, either to the Commonwealth or to the taxpayer; why,

then, do not obviously and grossly unjust methods involve a fundamentally wrong principle?

(a) Capitalization of earnings at 6 per cent is grossly unjust to the Railroad Company. It has a right to earn a return of 6 per cent as is declared by the decisions in Rate Cases.

> *Reinvestigation of Advances of Rates, Eastern Cases,* 20 Interst. Com. Comm. R. 243, 271, 288.
> *Reinvestigation of Advances of Rates, Western Cases,* 20 Interst. Com. Comm. R. 307, 336.
> *Ark. Rate Cases,* 187 Fed. 291, 346.
> *Lou. & Nash. R. R. Co.* v. *R. R. Comm.*, 196 Fed. 800, 831.

That the Company can not net 6 per cent return if limited each year to 6 per cent earnings is demonstrable, because it has no guarantor of the deficit when its earnings amount to less than 6 per cent. To capitalize earnings at 6 per cent, therefore, is to deliberately procure a valuation in excess of real value.

The matter is not one of speculation, but has been the subject of investigation, and it is demonstrable that in order to realize a 6 per cent return on capital the Company must earn 7½ or 8 per cent annually; Blauvelt, Rec. 642, pp. 197, 198.

Comptroller Blauvelt swears that 8 per cent capitalization is necessary to a steady 6 per cent return because a test made for about three years of unproductive items of expenses shows that they amount to about 2 per cent of the Company's capitalization. The items meant doubtless were handsome stations, required to be more expensive than necessary; separation of grades, etc.,

which neither reduce operating expenses nor increase earnings commensurate with the increased cost involved. See *Rate Cases* cited, *supra.*

Capitalization of earnings, therefore, at 6 per cent is as inadmissible as a traffic rate forbidding a 6 per cent return on capital. The adoption of such a rate for capitalization is, therefore, not simply a mistake in estimating value, but a mistake in principle or methods, and an arbitrary taking of property without due process of law, because the estimation of income rates goes to the basis of fair return on capital. The case would be plainer in appearance only but not in principle if *3 per cent* or *2 per cent* were adopted instead of *6 per* cent for capitalization.

(b) The selection of the highest market price of stocks and the *par* value of bonds during the past year as *criteria* of value, instead of the average market price of stocks and the real value of bonds constitutes an arbitrary valuation and is, moreover, grossly unjust. The average value for a considerable period of time furnishes a *real criterion.* A crisis in the stock market—the famous Northern Pacific excitement being most memorable—might establish a market price for an hour during the year at double, treble or quadruple the average value of the stock during the year. What would be thought of a local assessor's taxing a farmer's live stock at its highest market price during the last year? *Such a method involves a fundamentally wrong principle because it does not really ascertain value.*

(c) To capitalize a single year's earnings instead of an average of a number of years, involves a fundamen-

tally wrong principle of assessment. Nothing more is needed to demonstrate this than a comparison of complainant's net earnings for 1912 with those for 1913, for the net for 1912 assessment was $15,698,182.12 (Rec. 642, p. 197), and for 1913 only $8,416,808.65, when the average for the 5 years, 1907, 1908, 1909, 1910 and 1911 was $14,382,992 (Rec. 642, p. 206). The average affords a steady criterion while a single year's earnings demonstrates a value one year twice as much as that for another, —almost necessarily a *reductio ad absurdum*. Defendants refused to capitalize the small earnings for 1913 pronouncing them due to abnormal causes forgetting that unusually large earnings are due to abnormal causes. Defendants, however, while ignoring the current earnings because too small arbitrarily adopted an average of three of complainant's most prosperous years.'

(d) Defendants, however, did not capitalize *net earnings* at all but *gross corporate income* which included income from securities as well as from operation.

(e) Defendants, also, capitalized the so-called Kentucky gross corporate income instead of system income, they capitalized a hybrid of actual *intrastate* earnings and of a mileage proportion of *interstate earnings*. Let us make application of the foregoing points to the concrete cases presented.

Method of Assessment for 1912 Taxes.

In Cases 642 and 643, on the assessment for 1912, defendants fixed the capital stock at $27,124,240 and subtracted therefrom the tangible property assessment $12,377,383, leaving franchise assessment $14,746,857.

Their predecessors had assessed the same franchise value as follows:

For 1908 at $4,517,940, for 1909 at $4,509,680, for 1910 at $4,228,425, and for 1911 at $4,510,320.

The defendants, at the time, gave no account whatever of their method of making the assessment for 1912 at $14,746,857, but Mr. Rich, an attorney for them, informed Mr. Tarbet, this Company's Tax Commissioner, that the assessment was reached by adopting an average of the net Kentucky earnings of the Railroad Company for 1910 ($1,740,869), and for 1911 ($2,327,768.42) (average $2,034,318.71), and capitalizing the result at 6 per cent, making $33,905,312, of which the Board adopted 80 per cent, $27,124,249 as their valuation of the franchise.

In its bill (p. 10) complainant averred that the assessment had been reached by this illegal method (which flies in the teeth of the statute, and also imports into Kentucky the excess values in other States since the so-called Kentucky earnings are based on a mileage *pro rata*, Rec. 642, p. 196), and it appeared that such method almost exactly produced such figure. The District Court says (Rec. 642, p. 160):

> "The plaintiff alleges that the Board arrived at the sum of $27,124,240 as the value of such portion by taking 80 per cent of what it had found to be the

> fair cash value thereof to be and that it had ascertained such fair cash value by capitalizing at 6 per cent what it took to be plaintiff's net income in Kentucky. * * * The evidence sustains this position. * * * This affidavit is not contradicted and it is confirmed by the fact that 80 per cent of the sum which the average operating income so derived by plaintiff for those two years capitalized at 6 per cent is $27,124,246.40 or only $6.40 more than the sum at which the Board fixed the value of such portion."

The defendants, however, denied that the assessment was reached as alleged (Rec. 642, p. 100), and denied that the assessment in question was reached "by capitalizing its (this Company's) net income derived in said state" (p. 102), but they averred (p. 103) that the method adopted by them was to first ascertain the value "of the capital stock of the assets of the corporation under consideration:" And that in ascertaining such value of the entire capital stock the defendants found the market value of the outstanding shares of stock and funded debt; and also capitalized the annual net income or earnings of the corporation at 6 per cent, and then ascertained the proportion thereof which the mileage in Kentucky bore to the total mileage of the Company, which result was considered as showing the entire value of the capital stock in Kentucky, and that from such value was deducted the assessed value of the Company's tangible property in Kentucky, and the remainder was treated as the franchise assessment.

Defendants further answered (Rec. 642, p. 104) that they "found the fair cash value of the entire capital stock or all the assets or property of complainant used in its

business as a carrier of freight and passengers during the year ending June 30, 1911, was $300,000,000''; that they found the per cent of Kentucky mileage 12.3 per cent showing Kentucky's mileage proportion of the capital stock value to be $36,900,000; that they considered the net and gross earnings of the Company within and without Kentucky as reported by the Company to the Auditor; and that the report showed that the Company had earned in Kentucky $2,413,028, and that the ratio of gross earnings of complainant in Kentucky was 12.4 per cent of the gross earnings of the system, and that a capitalization of said Kentucky earnings at 6 per cent produced $38,779,400; that the net earnings in Kentucky for the year ending June 30, 1910, were $, and that capitalizing the average net earnings in Kentucky for the years gave the result of $, etc., etc.

They averred (Rec. 642, p. 105):

> "And upon consideration of the value of that proportion of the capital stock of complainant which the mileage of complainant in Kentucky bears to the mileage of complainant within and without Kentucky, the said Board, to the end that no injustice might be done complainant by the Board over-valuing its franchise for taxation, at the same time being anxious and determined to faithfully discharge their official duties as assessors, fixed the capital stock of complainant in Kentucky at $27,124,240,''

deducted the tangible valuation, $12,377,383, and adopted the remainder, $14,746,857, as the franchise valuation.

The method claimed was complicated by the fact that in defendant Bosworth's supplemental affidavit it was stated that defendants fixed such fair cash value at $35,-

046,202.00 when in their answer it was alleged that they fixed it at $36,900,000 (Rec. 642, p. 160).

Defendants conclude, however, that in order that no injustice might be done complainant "they fixed and determined the value of that part or proportion of the capital stock of complainant at $27,124,240."

The result, therefore, deducible from defendant's answer and from their several affidavits is (a) that they did not allow any deduction for excess value outside the State, concluding that there was none; (b) that they deducted nothing on account of the foreign status of the treasury securities; (c) that they allowed no equalization because they regarded such an allowance as a violation of official oath, and a criminal offence in view of Section 172 of the Constitution requiring assessment at fair cash value; (d) but that in order that no injustice might be done complainant they "fixed and determined the value of that part or proportion of the capital stock of complainant in Kentucky at $27,124,240," a sum considerably less than their declared method produced. In its amended bill (p. 106) complainant asserted the wrongful inclusion in the assessment of its treasury investments aforesaid, and of a mileage proportion of the value of its terminals outside Kentucky, and that defendants had capitalized the income from such investments in addition to the operating income in capitalizing the gross corporate income.

Obviously, the situation entitles complainant to reassessment, and it offered a draft of decree accordingly (p. 181), but it was rejected by the Court (p. 183). The

least, however, that could be properly accorded to defendant would be an assessment at 60 per cent (or 52 per cent) on $27,124,240, defendants' "fixed and determined" assessment. This complainant offered, in its petition for rehearing, to accept (p. 162), because only $3,897,161 assessment would result and complainant had already been compelled to pay as a condition precedent to a preliminary injunction on an assessment of $6,618,585. The Court denied such right to complainant (p. 105).

The Court's treatment of defendants' assessment of $27,124,240, *viz.*, raising it by 20 per cent before equalizing at 60 per cent, is inconsistent with its treatment of the Louisville & Nashville R. R. assessment in 230 Fed. 204, 5, where it said:

> "* * * There is room to claim that it applied thereto the standard of fair cash value, notwithstanding it noted the fact that the valuation which it made was less—*i. e.*, slightly less—than 80 per cent of what it believed was its fair cash value. It stated that the reduction which it made from the sum of $94,500,000 to that of $75,139,074 was made in order to be 'conservative,' 'out of abundant caution,' and 'that no injustice be done plaintiff in arriving at the value of its franchise.' This would seem to mean that it was made in order that it might be sure that it was valued at its fair cash value and no more. If such is its meaning, then the standard applied was that of fair cash value."

If it were ever admissible for the Court to indulge the assumption that the Assessors had allowed equalization, it would be inadmissible in the *instant* cases because defendants themselves declare that they had not done so, and even that to have done so would have been criminal,

citing the Kentucky Constitution, Section 172, making criminal the act of any Assessor guilty of misfeasance, and said that even if real estate in Kentucky was assessed for 1912 at only 60 per cent of fair cash value (Rec. 642, p. 101):

> "It would be unlawful for the defendants to intentionally or knowingly assess the franchise of complainant and the franchises of all other corporations at 60 per cent of their fair cash values * * * and if defendants should knowingly and intentionally or willfully do so, they would under the law of Kentucky be guilty of the crime of misfeasance, liable to indictment and conviction, which would subject them to heavy penalties and in addition thereto work a forfeiture of office."

An assessment, therefore, of this Company's franchise value at 100 per cent is established not only by confession, but by avowal.

The assessment, consequently, at $27,124,240 was subject to equalization, and the Court had found 60 per cent the proper rate for equalization. The Assessors do not say why it was necessary to reduce the assessment to $27,124,240 in order "that no injustice might be done to complainant," but the most obvious reason was that the method, whatever it was, by which they reached the larger sum of $36,900,000 (or $35,046,202) was recognized to be an unsound method. Undoubtedly, it was unsound, for it did not eliminate the treasury investment securities of the Company nor the excess value mile for mile outside the State. This Company was, therefore, entitled to equalization on the sum fixed by the Board *as the sum*

necessary to be reached in order that no injustice might be done. The franchise value, too, arrived at by application of equalization would be as aforesaid, $3,897,161 (nearly $4,000,000) and the franchise assessment for 1911 had been $4,510,320, and for the four next previous years about the same sum.

Again, the sum which the Assessors employed as Kentucky earnings—if they worked by the Kentucky earnings—was not the net earnings at all, but the *gross corporate income,* as aforesaid, which included not only income from operation, but also income from treasury investments, etc., as explained in the evidence (Rec. 642, p. 201, *et seq.*). To reduce the assessment from a strict mileage proportion of a sum reached by capitalizing the *gross corporate income on the average of two years of heavy earnings,* was certainly necessary in order "that no injustice might be done" this Company; but whatever the method employed by the Assessors was, it is immaterial whether or not they adopted 80 per cent of it, or whether they treated such reduction as equalization or not, for an equalization upon an *arbitrary, exorbitant* method of assessment, or assessment regardless of method, deprives the Taxpayer of its Constitutional right to equalization on a sum fixed by a legal method. That the assessment by the same Assessors for the same year of the franchise of the *Lou. & Nash. R. R. Co.* was arbitrary, was demonstrated by the District Court. See 209 Fed. Rep. 460. See also, on the true nature of the 80 per cent reduction in other cases, the District Court's comment in *Ches. & Ohio R'y Co.* v. *Bosworth,* Case 775, quoted Rec. 642, p. 165.

It consequently appears that although defendants themselves said that it was necessary to reduce the result of their calculations to $27,124,240 in order "that no injustice might be done" this Company, the Court before allowing any equalization raises the assessment by $6,781,060, to $33,905,300.

There is no ground, therefore, upon which the Court's decision upon the *instant* point can be sustained, but either the $27,124,240 fixed by the Assessors must be accepted and equalized at 60 per cent, or a new assessment be ordered, inasmuch as the Board did not reach its assessment by a legally authorized method, and it is so prayed in the *Petition for Rehearing*, Rec. 642, pp. 102, *et seq.*

Questions common to this assessment and to the assessment for 1913 will be noted later.

Method of Assessment for 1913 Taxes.

In Cases 644 and 645 on the assessment for 1913 defendants fixed the capital stock at $23,679,180, from which they deducted the assessed value of the tangible property, $12,478,903, leaving $11,200,277 which they treated as the franchise valuation. For 1913 they undertook to explain their assessment; see Exhibit Y with Bill, Rec. 644, pp. 27, *et seq.* The methods avowed, however, did not produce the sum fixed as the assessment, so the assessment was really arbitrary.

Defendants informed us, however (Rec. 644, p. 33) that after considering—

"the market and real value of its (Company's) stocks and bonds and the gross earnings of respondent within and without Kentucky, and all other matters appertaining thereto"

they—

"adjudged and determined * * * that the fair cash value of the total capital stock of the * * * Company used in its business in Kentucky and elsewhere during the year ending June 30, 1912, was $280,000,000. * * *

"Therefore, the Board of Valuation and Assessment finds and determines the value of Kentucky's proportion of the entire capital stock of respondent at $43,400,000 ($34,400,000) and to be conservative and out of an abundance of caution to the end that no injustice may be done respondent, in arriving at the value of the corporate franchise of the respondent in this State, the Board considered less than 80% of that which it believes to be the fair cash value of Kentucky's proportion of the entire capital stock of respondent, to-wit, $34,400,000, and has made additional, or arbitrary deduction from this amount on account of the decrease in earnings of respondent for year ending June 30, 1912. It is now ordered that the value of the capital stock of the Illinois Central Railroad in Kentucky for the year of 1913, be fixed at $23,679,180.00, which, in the opinion of the Board, is less than 80% of its fair cash value with an additional reduction for reasons set forth from which sum is deducted the assessed value of its tangible property in Kentucky, or the counties where situated, to-wit: $12,478,903.00, and the remainder, to-wit, $11,200,277.00 is adjudged to be the value of the franchise of the Illinois Central Railroad Company in Kentucky, subject to taxation for the year 1913."

The Company, having already paid, as a condition of the issuance of a preliminary injunction, upon an assessment of $6,000,000 offered to accept and pay upon an assessment of $23,679,180 equalized at 60 per cent, yielding $14,207,508, which less tangible, $12,478,903 yielded a franchise valuation of only $1,728,605, far less than the $6,000,000 upon which payment had already been made (Rec. 644, p. 148); but this the Court declined, and fixed the assessment at $34,400,000, or 20 per cent in excess of that fixed by defendants, upon the assumption by the Court that equalization at 80 per cent had already been allowed, thereby requiring the Company to pay (Rec. 644, p. 174) upon an assessment of $8,161,067, a sum $2,161,067 in excess of the $6,000,000 assessment upon which payment had already been made.

It would be unprofitable to follow defendants through their discussion, because the points made upon the evidence bear no relation whatever to, nor connection with, the result finally reached; but it may be instructive to note that although, by their first computation, they promptly computed the shares of capital, par value $109,296,000 at $136, "average price," making $148,642,560, they computed the debenture stock and bonds at *par* instead of *their actual value considerably below par*, thus reaching an aggregate valuation of $317,525,260 instead of the real value of $296,249,519 (Blauvelt, Rec. 642, p. 199).

This sum was apportioned to Kentucky on a mileage basis without deduction for excess value outside the State, amounting to 39.2 per cent, or equalization,

amounting to 60 per cent, although defendants apparently suggested equalization at 80 per cent: See Rec. 644, p. 31.

By another computation (p. 31) defendants deducted the treasury securities from the $317,525,260, leaving $261,650,505.05, and apportioned such sum upon a mileage basis and *suggested* 80 per cent, making $25,745,409, which less tangible valuation yielded franchise $13,267,506; but no allowance was made for excess value outside the State, nor any equalization unless the 80 per cent was meant to represent it, an inadmissible conclusion in view of defendants' avowals. (Rec. 644, p. 32)

By a third computation defendants took the *gross corporate income* of the Company for three of its very largest years, 1909, 1910 and 1911, and absolutely ignored the current year's income. *When ignoring the present the Assessors had the entire past to select from*, and, accordingly, they selected the year 1909, income $17,083,763.00, the year 1910, income $16,069,778.00, and the year 1911, income $21,135,478, and discarded the year 1912, income $13,216,303.26. The average gross corporate income for said first three years was $18,093,300, which capitalized at 6 per cent yielded $301,556,000 from which the Assessors deducted the treasury securities, leaving balance $245,665,245, which apportioned at 12.3 per cent made $30,216,825 for Kentucky, and of this sum they took 80 per cent, $24,173,460, which, less tangible, yielded franchise $11,694,557; but they allowed nothing for excess value outside the State, nor did they equalize the assessment unless the 80 per cent adopted was meant as equalization, but this the Assessors disavowed as aforesaid.

The *gross corporate income*, however, was not a figure for capitalization at all, but the figure *the capitalization of which represented value* was the *net operating income* No wonder, therefore, that the Assessors were unwilling to stand upon their own calculations as all were radically erroneous, but that they made reduction from all of them, although the reduction from the result of the last method, obviously an indefensible method, was small.

The *net operating income*, the capitalization of which alone evidenced value, was for 1912, $15,698,182.12, and not $21,135,487 (Blauvelt, Rec. 642, p. 197), and for the year 1913 was $8,416,808.65 and not $13,216,303.26—*a figure, however, not used at all by defendants*—but, as aforesaid, the imaginary problems propounded by defendants (Rec. 644, pp. 31, 32) are really not interesting, because they have no connection with the result reached, to-wit (p. 33) $280,000,000, apportioned to Kentucky 12.3 per cent $34,400,000, a sum abandoned for $23,679,180, as aforesaid.

Defendants themselves introduced evidence (Rec. 642, p. 264) of the census expert, Prof. Henry C. Adams, showing that in order to reach value it is the "operating income" which is to be capitalized, and that the income "from investments in property not used in the business of transportation should be excluded from the sum capitalized," the expert saying that the reason was "that to include such income would result in a duplication of value when the Bureau of the Census combines the values here submitted," etc.

In denying complainant the right to pay upon 60 per cent equalization of the sum *adjudged* by defendants, as aforesaid, "to be the value of the franchise of the Illinois Central Railroad Company in Kentucky subject to taxation for the year 1913" (Rec. 644, p. 33) the Court (Rec. 644, p. 143) recited the process ("If that may shape be called which shape had none") related by defendants (p. 33) and recognized the Company's right to equalization at 60 per cent, but held that the equalization was applicable to the $34,400,000 and not to the $23,678,180.

The Court, moreover, held (Rec. 644, p. 144) that defendants' action in fixing $280,000,000 as the system value could not be attacked except for fraud or a fundamentally wrong principle, saying further (p. 144):

> "* * * No fundamental principle is involved in determinig whether an interstate unit shall be valued on the capitalization or the stock and bond plan or whether, if the capitalization plan is adopted, what rate of interest shall be used in capitalizing, or how many years' earnings shall be considered in determining the amount to be capitalized or what is the amount of net income for a given year, or if the stock and bond plan is adopted what is the value of the stock and bonds. On all such matters the action of the Board, in the absence of fraud, is absolutely binding on me. I have no right to substitute my judgment for that of the Board."

After reciting (p. 144), complainant's contention as to excess value, the court said (p. 146):

> "* * * I think, however, that it must be taken that the Board made due allowance for this

> excess value in fixing the fair cash value of plaintiff's capital stock subject to apportionment at $280,000,000. Plaintiff claimed before it that such excess value should not be apportioned. The Board in its minute noted the fact of the claim and that it had been duly considered."

This finding of the court was *refuted by the finding of defendants themselves* (Rec. 644, p. 32), when defendants said that the net operating revenues in Kentucky bore ratio to those of the system of 12.09 per cent and the Kentucky mileage bore ratio of 12.03 per cent to the system mileage, wherefore (p. 33)—

> "the Board is of the opinion *and finds* that the mileage of respondent in Kentucky is as valuable as the average mileage of the system. * * *" (*Italics ours.*)

It accordingly appears, that the Court has *presumed* away the excess value of the Company's tangible property outside Kentucky, *leaving taxed in Kentucky such excess value embodied in the capital stock valuation, which included both tangible and intangible property, upon the basis of a mileage prorate.*

It is probably unnecessary to consider the legal right of the Court to indulge presumptions as to whether or not complainant's constitutional rights had been infringed by defendants in assessing its property outside the State, because defendants themselves showed that they had made no deduction thereof in reaching their assessment, but it is clear as a legal proposition that the Court was not justified in conclusively presuming that the assessment preserved complainant's Constitutional

rights instead of determining the question for itself upon the evidence.

The evidence was uncontradicted. It showed the excess value outside the State due principally to the extensive terminals in Chicago, New Orleans and Memphis. Defendants did not introduce a *scintilla* of evidence. While, therefore, if it were conceded that provided the *instant* question were one of mere valuation of property in Kentucky the Court would be concluded by defendants' valuation, the Court would not be, under the Constitution, concluded by any valuation made by Kentucky Assessors of property outside the State. Such an estoppel would allow manipulation of values at pleasure in taxing property in other States by including it in a unit covering many States and apportionable to them respectively; see *L. & N. R. R. Co.* v. *Bosworth*, 209 Fed. 422, *et seq.*; *Fargo* v. *Hart*, 193 U. S. 499, 500. If Assessors in one state could tax values in others by simply making a finding that the taxable unit was of equal value proportionately in all states, they could similarly deprive a taxpayer of equalization by making a finding that equalization had been already allowed in the assessment reached. Constitutional rights can not be thus summarily abolished, but the courts must hear evidence on them. *K. C. So. R'y* v. *Albers, etc., Co.*, 223 U. S. 573, 591, and cases cited; *C., B. & Q. R. R. Co.* v. *Babcock*, 204 U. S. 585.

The same principle was recognized by the District Court in the *Lou. & Nash. R. R. Co. Case* in requiring defendants to declare their methods of assessment so that it

could be ascertained whether or not Constitutional rights had been infringed, 209 Fed. 381, Syll. 6, and pp. 381, 439.

The State's strict mileage proportion of the total valuation was not proper for adoption under any circumstances, because it included values in other states; and it represented 100 per cent when other similar property in the State was assessed at about 50 per cent of actual value; but a reduction was proper, also, because the methods of assessment adopted by defendants were indefensible as is above shown. Assessing bonds at *par* regardless of real value; selecting for capitalization heavy earnings made in past fat years, and not even including the current lean year; capitalizing the complainant's *gross corporate income* (including income not derived from railroad operation) instead of *net operating income*, and the like naturally reached results requiring reduction, and it was inadmissible to treat the reduction as equalization when the Assessors expressly disavowed having made equalization, and denounced it as an offense. To decline to interfere with an assessment under such circumstances amounts virtually to a renunciation of judicial functions, and the establishment of a new category of wrongs for which redress shall not be given.

In anticipation of opponents' points on the foregoing argument, it suffices to say that the Company's report to the Auditor (Rec. 642, p. 18; Rec. 644, p. 36) undertook to show *Kentucky earnings*, as well as *system earnings*, because the State Auditor's form of report called for it, but the Statute required the assessment to be made upon the basis of system earnings; that Kentucky earn-

ings could only be estimated and that the item given in the report was but a combination of *intrastate* earnings and a mileage proportion of interstate earnings with arbitrary *minima* as was proved by Comptroller Blauvelt. (Rec. 642, p. 196.)

Likewise, the so-called blueprint methods of valuation propounded by Tax Commissioner Tarbet (Rec. 642, pp. 22½, 37, 64, 66, 67; Rec. 644, pp. 20, 24, 25, etc.) were fully explained by Mr. Tarbet in his cross-examination (Rec. 642, pp. 209, *et seq.*) and redirect examination (p. 213).

Mr. Tarbet's testimony is so compact, his application of the figures to concrete methods of assessment so luminous, that analysis of his testimony is unnecessary. He demonstrates that no franchise value was really assessable against the Company in Kentucky. In the assessment of tangibles Kentucky had already got her full share of the taxation of the total capital stock value, tangible and intangible. Also he explains why he proposed the methods of assessment to defendants which indicated an assessable value, *viz.*, that he was compelled to accept as premises things demanded by them, such as capitalization of earnings at 6 per cent instead of 8 per cent, etc., etc. He explained (p. 211) that the cost of reproduction had no relation to value, "nothing to do with the value for taxation"—"not for taxation, no. It may be for rate-making." Asked the difference, he answered: "The basis you would take for your value for rate-making purposes is the money you put into it; but when you try to get a value for taxation you consider the money you get out of it."

The Court—"That is the distinction."

It accordingly appears that whether the District Court be correct or not in its enunciation (Rec. 644, p. 144) that defendants' action is not subject to Court review as to plan adopted, stock and bonds or capitalization of earnings; nor as to the number of years' earnings capitalized, whether one or many; nor as to rate for capitalization, *there was nothing for franchise valuation after allowance for excess value outside the State and equalization at even 60 per cent* either by the Lurton method adopted by the Circuit Court of Appeals, or the method invented by the District Court.

If, however, it be conceded for argument's sake that defendants had the election to assess by the stock and bonds method or the earnings method, or both combined, it would, nevertheless, certainly be a fundamentally wrong method to capitalize at any rate selected at pleasure regardless of relevancy to conditions; or to select arbitrarily for capitalization any year or years' earnings past or present (or future); or to value stocks and bonds at par regardless of real values determinable by market price when applicable or by well-known conditions such as acknowledged values produced by computation based on their actual rates of interest. Whether, therefore, an assessment at *par* of bonds worth 50 per cent, or 110 per cent, as the case might be according to the price fairly stable in the market for years; or capitalization of earnings for past year selected at random; or adoption for capitalization of a certain rate per cent regardless of its effect on value or on a fair return on property, be invalid

because called a fundamentally wrong principle or called a method adopted by mistake or called fraud, objective in what is done if not subjective in a reckless, irresponsible mind, is immaterial. In any case it is illegal and may under proper conditions be enjoined; see cases cited *supra* as to wrong methods, and see *Raymond* v. *Traction Co.*, 207 U. S. 20, 38, and *Johnson* v. *Wells-Fargo*, 239 U. S. 234, Syll.

Mathematical Errors in Assessment May Be Reviewed and Corrected by the Court.

In the case of *State* v. *Travelers' Ins. Co.*, 70 Ct. 590, 66 Am. State Rep. 138, 40 Atlantic, 465 (Supreme Court of Connecticut, 1898), there was involved an action to recover the balance of a tax upon the shares of non-resident stockholders of the Travelers' Insurance Co. The shares had been assessed according to their value, as provided by statute, but a deduction had not been made of so much of the capital of the Insurance Company as was invested in real estate and upon which taxes were assessed and paid, as was provided by another section of the statute. The court, in the opinion written by Judge Baldwin, held that, notwithstanding the provision in the statute that the "valuation of the * * * estate" made by the Board "shall be final" the errors in the mathematical process by which the valuation was reached could be corrected and that therefore the valuation should be reduced by deducting the amount of capital of the Insurance Company in real estate upon which taxes

were assessed and paid. The opinion relating to this point follows:

> "The pith of the answer to the complaint is that the Board of Equalization ought to have allowed the deduction claimed from the market value of the shares on account of the defendant's holdings of taxable real estate. Such a deduction is provided for by General Statutes, Section 3836, in favor of every resident shareholder. His shares are to be set in his list in the town in which he resides at their market value, 'but so much of the capital of any such company as may be invested in real estate, on which it is assessed and pays a tax, shall be deducted from the market value of its stock, in its returns to the assessors.'
>
> "If such a deduction ought to have been made by the State Board of Equalization, the defendant can properly avail itself, in this proceeding, of their omission of that duty. The only question is whether a certain amount, as to which there is no dispute, should have been subtracted from the market value of the stock. The provision of the statute (Gen. Stats., Sec. 3930) that the 'valuation of the * * * estate' made by the Board 'shall be final' does not preclude the courts, in a suit for the tax, from correcting any errors in the mathematical process by which such valuation was reached: State v. New York, etc., R. R. Co., 60 Conn. 326, 336."

In the case of *Renfrew* v. *Webb*, 54 Pac. Rep. 448 (Supreme Court of Oklahoma, 1898), an action was brought to enjoin the collection of taxes. The ground of the action was that the valuation was excessive and fraudulent. In the course of its opinion, the court made the following statement of law, which is applicable to our case, declaring that the judgments of assessors can be

reviewed by action for fraud, mistake, or other cause, giving jurisdiction to courts of equity. The following passage is quoted from page 451 of the opinion:

> "It has been uniformly held that assessors are *quasi*-judicial officers when acting within the sphere of their jurisdiction, and their assessments, when made, become judgments to be enforced by warrant in the nature of a special execution, but their judgments can be reviewed for action for fraud, mistake, or other cause, giving jurisdiction to courts of equity."

In the case of *Western R. R. Co.* v. *Nolan, et al.*, 48 N. Y. Rep. 513 (1872), an action was brought to restrain assessors from assessing the value of certain personal property for the purpose of taxation. The purpose of the action was to review the assessment and the court held that the proper remedy was by writ of certiorari. The following extract from the opinion is pertinent to our cases:

> "The assessors are not subject to an action to review, modify or reverse their judgments, nor to hold them to personal liability when acting within their jurisdiction. (Barhyte v. Shepherd, 35 N. Y. R. 238, and cases there cited.) Their judgments can be reviewed by action for fraud, mistake, or other cause giving jurisdiction to courts of equity, but it is the parties affected by the judgment who must be brought into court to litigate, and not the judges."

In the case of *Western Union Telegraph Co.* v. *Trapp*, 186 Fed. Rep. 114 (Circuit Court of Appeals, 8th Circuit, 1911) an injunction was sought restraining the State

Board of Assessors from certifying an assessment made by the Board of Assessors to various counties of the State for extension on the tax roll. The complainant's bill was dismissed. One ground for the bill was that the valuation of the complainant's property was higher than the valuation of other relative property subject to taxation. The court stated the rule to be as follows:

> "'The judgment of a State Board empowered to fix the valuation for taxation can not be set aside by the testimony of witnesses that the valuation was other than that fixed by the Board, *where there is no evidence of fraud and no gross error in the* system on which the valuations were made.' Railway Co. v. Backus, 154 U. S. 421, 14 Sup. Ct. 1114, 38 L. Ed. 1031; Adams Express Co. v. Ohio, 165 U. S. 194, 17 Sup. Ct. 305, 41 L. Ed. 683; Coulter v. Louisville & Nashville Rd. Co., 196 U. S. 599, 25 Sup. Ct. 342, 49 L. Ed. 615; C., B. & Q. R'y Co. v. Babcock, 304 U. S. 585, 27 Sup. Ct. 326, 51 L. Ed. 636."

CONCLUSION.

The great importance of the questions involved in these cases, we hope, justifies the length of this brief.

From the evidence of Mr. Tarbet (Rec. 642, p. 206, *et seq.*) and the problems by him propounded (p. 265, *et seq.*) it appears that when complainant is allowed deductions for its Treasury Investments outside the State, for the excess value mile for mile of its railroad outside over that inside the State, and allowed equalization even at 60 per cent, no sum remains for franchise valuation after deducting the amount assessed by the Kentucky Railroad Commission as the value of complainant's tangible property in Kentucky. Likewise, it appears that

if the method required by *Coulter* v. *Weir* were applied, not only would defendants have been unable to manifest any franchise value for taxation, but that complainant had shown by the best evidence attainable that none existed—the burden, however, being upon the defendants.

But regardless of the questions of deductions aforesaid, and accepting the results of defendants' work which ignored the claims for deduction of Treasury Securities and the excess value of tangible property outside Kentucky aforesaid, and applying equalization even at 60 per cent, the rate determined by the District Court, franchise valuations, as is above shown, would result of only $3,897,161.00 for 1912 (*Ante*, p. 135) and $1,728,605.00 for 1913 (*Ante*, p. 140), sums much less than those upon which complainant has already been required by the District Court to pay taxes as conditions precedent to the issuance of preliminary restraining orders.

We accordingly pray that the decrees below be rereversed upon complainant's appeals and affirmed upon defendants' cross-appeals with directions to grant injunctions in accordance with the prayers of complainant's Bills of Complaint.

Very respectfully submitted,

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APPENDIX.

The provisions of the Constitution cited in this brief are as follows:

No. 171. LEVY AND COLLECTION OF BY GENERAL LAWS—UNIFORMITY. The General Assembly shall provide by law an annual tax, which, with other resources, shall be sufficient to defray the estimated expenses of the Commonwealth for each fiscal year. Taxes shall be levied and collected for public purposes only. They shall be uniform upon all property subject to taxation within the territorial limits of the authority levying the tax; and all taxes shall be levied and collected by general laws.

No. 172. ASSESSMENT—HOW VALUE FIXED—PENALTY. All property, not exempted from taxation by this Constitution, shall be assessed for taxation at its fair cash value, estimated at the price it would bring at a fair voluntary sale; and any officer, or other person authorized to assess values for taxation, who shall commit any willful error in the performance of his duty, shall be deemed guilty of misfeasance, and upon conviction thereof shall forfeit his office, and be otherwise punished, as may be provided by law.

No. 174. CORPORATE, TO BE TAXED LIKE INDIVIDUAL PROPERTY—INCOMES—LICENSES—FRANCHISES. All property, whether owned by natural persons or corporations, shall be taxed in proportion to its value, unless exempted by this Constitution; and all corporate property shall pay the same rate of taxation paid by individual property. Nothing in this Constitution shall be construed to prevent the General Assembly from providing for taxation based on income, licenses or franchises.

The provisions of the Kentucky Statutes referred to in this brief are as follows:

No. 4020. PROPERTY SUBJECT—TANGIBLE AND INTANGIBLE PROPERTY—FRANCHISES. All real and personal estate within this State, and all personal estate of persons residing in this State, and of all corporations organized under the laws of this State, whether the same be in or out of the State, including intangible property, which shall be considered and estimated in fixing the value of corporate franchises as herein provided, shall be subject to taxation unless the same be exempt from taxation by the Constitution, and shall be assessed at its fair cash value, estimated at the price it would bring at a fair voluntary sale: *Provided, however,* That tangible personal property located and having a taxable situs without the State, of persons residing in this State, and of all corporations organized under the laws of this State, shall not be subject to taxation: *And, provided further,* That the situs of intangible personal property for purposes of taxation shall be at the residence of the real or beneficial owner, and not at the residence of the fiduciary or agent having the custody or possession of same. *Provided further,* That nothing herein contained shall in any way affect the liability for franchise taxes now payable by corporations organized under the laws of this State.

No. 4021. LIEN ON PROPERTY FOR TAXES DUE STATE, COUNTY, TOWN. The Commonwealth and each county, incorporated city, town or taxing district, shall have a lien on the property assessed for the taxes due them respectively (for five years) which shall not be defeated by gift, devise, sale, alienation, or any means whatever, unless the gift, devise, sale or alienation shall have been made for more than five years before the institution of proceedings to enforce the lien, and nothing shall be exempt from levy and sale for taxes and cost incident to the sale. When any lands or improvements shall not be assessed in any one year, it may be assessed retrospectively in the manner provided for by law, for that year, at any time not later than five years thereafter; but the lien thereby accruing shall not prejudice the rights of purchasers acquired in the meantime.

No. 4077. FRANCHISE—ASSESSMENT OF. Every railway company or corporation, and guarantee or security company, gas company, water company, ferry company, bridge company, street railway company, express company, electric light company, electric power company, telegraph company, press dispatch company, telephone company, turnpike company, palace-car company, dining-car company, sleeping-car company, chair-car company, and every other like company, corporation or association, also every other corporation, company or association having or exercising any special or exclusive privilege or franchise not allowed by law to natural persons, or performing any public service, shall, in addition to the other taxes imposed on it by law, annually pay a tax on its franchise to the State, and a local tax thereon to the county, incorporated city, town or taxing district, where its franchise may be exercised. The Auditor, Treasurer and Secretary of State are hereby constituted a board of valuation and assessment for fixing the value of said franchise, except as to turnpike companies, which are provided for in Section 1 (4095) of Subdivision 4 of this article, the place or places where such local taxes are to be paid by other corporations on their franchise, and how apportioned, where more than one jurisdiction is entitled to a share of such tax, shall be determined by the board of valuation and assessment, and for the discharge of such other duties as may be imposed on them by this act. The Auditor shall be chairman of said board, and shall convene the same from time to time, as the business of the board may require. It shall be the duty of the Attorney General, when requested by the board of valuation and assessment, to attend said board at its meetings and advise with same in its proceedings.

No. 4078. CORPORATIONS TO REPORT TO AUDITOR TO DETERMINE VALUE OF FRANCHISE. In order to determine the value of the franchises mentioned in the next preceding section, shall, annually, between the thirtieth day of June and the first day of October, make and deliver to the Auditor of Public Accounts of this State a statement, verified by its president, cashier,

secretary, treasurer, manager, or other chief officer or agent, in such form as the Auditor may prescribe, showing the following facts, viz.: The name and principal place of business of the corporation, company or association; the kind of business engaged in; the amount of capital stock, preferred and common; the number of shares of each; the amount of stock paid up; the par and real value thereof; the highest price at which such stock was sold at a *bona fide* sale within twelve months next before the thirtieth day of June of the year in which the statement is required to be made; the amount of surplus funds and undivided profits and the value of all other assets; the total amount of indebtedness as principal, the amount of gross or net earnings or income, including interest on investments, and incomes from all other sources for twelve months next preceding the thirtieth day of June of the year in which the statement is required; the amount and kind of tangible property in this State, and where situated, assessed, or liable to assessment in this State, and the fair cash value thereof, estimated at the price it would bring at a fair voluntary sale, and such other facts as the Auditor may require.

No. 4079. VALUE OF FRANCHISE—HOW DETERMINED—LINES EXTEND BEYOND STATE OR COUNTY. Where the line or lines of any such corporation, company or association extend beyond the limits of the State or county, the statement shall, in addition to the other facts hereinbefore required, show the length of entire lines operated, owned, leased or controlled in this State, and in each county, incorporated city, town or taxing district, and the entire line operated, controlled, leased or owned elsewhere. If the corporation, company or association be organized under the laws of any other State or government or organized and incorporated in this State, but operating and conducting its business in other States as well as in this State, the statement shall show the following facts in addition to the facts hereinbefore required: The gross and net income or earnings received in this State and out of this State, on business

done in this State, and the entire gross receipts of the corporation, company or association in this State and elsewhere during the twelve months next before the thirtieth day of June of the year in which the assessment is required to be made. In cases where any of the facts above required are impossible to be answered correctly, or will not afford any valuable information in determining the value of the franchise to be taxed, the said board may excuse the officer from answering such question: *Provided*, That said board, from said statement, and from such other evidence as it may have, if such corporation, company or association be organized under the laws of this State, shall fix the value of the capital stock of the corporation, company or association, as provided in the next succeeding section, and from the amount thus fixed shall deduct the assessed value of all tangible property assessed in this State, or in the counties where situated. The remainder thus found shall be the value of its corporate franchise subject to taxation as aforesaid.

No. 4080. FOREIGN CORPORATIONS—FRANCHISE—HOW DETERMINED. If the corporation, company or association be organized under the laws of any other State or government, except as provided in the next section, the board shall fix the capital stock in this State by capitalizing the net income derived in this State, or it shall fix the capital stock as hereinbefore provided, and will determine from the amount of the gross receipts of such corporation, company or association in this State and elsewhere, the proportion which the gross receipts of this State, within twelve months next before the thirtieth day of June of the year in which the assessments were made, bears to the entire gross receipts of the company, the same proportion of the value of the entire capital stock or the capitalizing of the net earnings in this State, less the assessed value of the tangible property assessed, or liable to assessment, in his State, shall be the correct value of the corporate franchise of such corporation, company or association for taxation in this State.

No. 4081. INTERSTATE CARRIER—FRANCHISE —HOW FIXED. If the corporation organized under the laws of this State, or of some other State government, be a railroad, telegraph, telephone, express, sleeping, dining, palace or chair-car company or a corporation performing any other public service, the lines of which extend beyond the limits of the State, the said board will fix the value of the capital stock as hereinbefore provided, and that proportion of the value of the capital stock which the length of the lines operated, owned, leased, or controlled in this State, bears to the total length of the lines owned, leased or controlled in this State and elsewhere, shall be considered in fixing the value of the corporate franchise of such corporation liable for taxation in this State; and such corporate franchise shall be liable to taxation in each county, incorporated city, town or district through or into which such lines pass, or are operated, in the same proportion that the length of the line in such county, city, town or district bears to the whole length of lines in this State; but if any such railroad or other corporation organized under the laws of this State have all of its lines outside of this State, the said board shall fix the value of its entire capital stock as hereinbefore provided, and apportion to this State for taxation therein the proper proportion and not less than one per cent of its said capital stock, and the amount so apportioned shall be the value of its intangible property, including its corporate franchise, stocks, bonds, securities and choses in action, subject to taxation in this State and in the county, city, town and district where its principal place of business in this State may be located.

No. 4083. AUDITOR TO NOTIFY CORPORATION OF VALUES. It shall be the duty of the auditor, immediately after fixing such values by said board, to notify the corporation of the fact; and all such corporations shall have thirty days from the time of receiving the notice to go before such board and ask a change of the valuation, and may introduce evidence, and the chairman of the board is hereby authorized to summons and

swear witnesses and, after hearing such evidence, the board may change the valuation as it may deem proper, and the action of the board shall be final.

No. 4084. AUDITOR TO CERTIFY TO COUNTY CLERK. The auditor shall, at the expiration of thirty days after the final determination of such values, certify to the county clerk of the counties, when any portion of the corporate franchise of any such corporation, company or association shall be liable to local taxation as herein provided, the amount thereof liable for county, city, town or district tax, and such certificate shall be by each county clerk filed in his office, and be by him certified to the proper collecting officer of the county, city, town or taxing district for collection, and all county, city, municipal, school and other taxes shall be due and payable thirty days after the notice of the amount of such tax is given by the officer whose duty it is to collect the same.

No. 4086. PAY TAXES INTO STATE TREASURY. All corporations and other persons who are required to make reports to the auditor of public accounts shall pay all taxes due the State from them into the treasury at the same time, and shall be liable for and pay the same rate of interest and penalties as defaulting individuals, except where otherwise specially provided.

No. 4090. CORPORATION FAILING TO REPORT —BOARD TO FIX VALUES. Should any corporation fail to make the reports as required herein on or before the first day of October of each year, the said board shall proceed to ascertain the facts and values as required by this article, in such manner and by such means as it deems proper, at the cost of the company failing to make the report, and shall fix the value of the corporate franchise liable for taxation as aforesaid and the corporation shall be taxed accordingly.

No. 4091. TAXES WHEN DUE—PENALTIES—CLERKS TO FURNISH STATEMENT OF VALUE OF TANGIBLE PROPERTY. All the State taxes assessed against any corporation, company or association, under this article, shall be due and payable thirty days after

notice of the same has been given said corporation, company or association by the auditor; and all county, municipal, school and other taxes shall be due and payable thirty days after notice of the amount of said tax is given by the officer whose duty it is to collect the same; and every such corporation, company or association failing to pay its taxes, after receiving thirty days' notice, shall be deemed delinquent, and a penalty of ten per cent on the amount of the tax shall attach, and thereafter such tax shall bear interest at the rate of ten per cent per annum. Any such corporation, company or association failing to pay its taxes, penalty and interest, after becoming delinquent, shall be deemed guilty of a misdemeanor and, on conviction, shall be fined fifty dollars for each day the same remains unpaid, to be recovered by indictment or civil action, of which the Franklin Circuit Court shall have jurisdiction. It shall be the duty of the county clerk to furnish to the Auditor of Public Accounts on blanks provided by the auditor, a statement of the assessed value of the tangible property of all corporations, companies or associations paying a franchise or other tax under this act.

Any county clerk failing to comply with the requirements of this act shall be guilty of a misdemeanor and, on conviction, shall be fined not less than ten nor more than twenty-five dollars.

No. 4096. TO REPORT TO AUDITOR—PENALTY FOR FAILURE. That the president or chief officer of each railroad company, or other corporation owning or operating a railroad line, in whole or in part, in this State, and all railroad bridge companies owning or operating the bridge spanning a river constituting the boundary of this State shall, on or before the first of August in each year, return to the Auditor of Public Accounts of the State, under oath, the total length of such railroad, including the length thereof beyond the limits of the State, and designating its length within this State, and in each county, city, incorporated town and taxing district therein, together with the average value per mile thereof, and in the respective counties, cities, in-

corporated towns and taxing districts therein, together with the average value per mile thereof, for the purpose of being operated as a carrier of freight and passengers, including engines and cars, and a list of the depot grounds and improvements, and other real estate of the said company, and the value thereof, and the respective counties, cities and incorporated towns in whch the same are located. That if any of said railroad companies own or operate a railroad or railroads out of this State, the president or chief officer of such company shall only be required to return such proportion of the entire value of all its rolling stock as the number of miles of its railroad in this State bears to the whole number of miles operated by said company in and out of this State. Said report shall be made as of the first day of July, and a failure to file said report by the first day of August shall subject the president or chief officer residing in this State to a fine of one thousand dollars, and fifty dollars for every day after the first day of August that he fails to file said report, to be recovered as indicated by Section 9 (4104) of this article.

No. 4098. RAILROAD COMMISSION TO EQALIZE. The auditor shall lay before the Railroad Commission, on or before the fifteenth day of August, the returns made to him under this act, and any shedules and valuations he may have made under Sections 1 and 2 (4096, and 4097), of this article. And should the valuations, or any of them, in the judgment of said board, be either too high or too low, they shall correct and equalize the same by a proper increase or decrease thereof. Said board shall keep a record of their proceedings, to be signed by each member present at any meeting, and the said board is hereby authorized to examine the books and property of any railroad company to ascertain the value of its property, or to have them examined by any suitable disinterested person, to be appointed by them for that purpose.

COUNTY BOARD OF SUPERVISORS.

No. 4115. COUNTY JUDGE TO APPOINT—NUMBER. The county judge, except in counties having a city therein of the first, second, third or fourth class, shall, at the November term of each court, appoint five intelligent, discreet housekeepers and owners of real estate residing in different portions of the county and in counties having a city therein of the first or second class he shall appoint three additional persons in such city and from different wards thereof; and in counties having a city therein of the third or fourth class, he shall appoint two additional persons from each city and from different wards thereof, who shall constitute the board of supervisors of tax in their respective counties.

No. 4120. DUTY AND POWERS OF SUPERVISORS. The board of supervisors shall make a careful examination of the assessor's books, and each individual list thereof, and may increase or decrease any list; but the board shall not reduce or raise any assessment unless the evidence be clear and unmistakable that the valuation is not a fair cash value, and shall list all property omitted by the assessor which may be subject to taxation in the county, and shall correct any errors of the assessor; and in cases where the property has not been correctly valued, they shall fix the value thereof, and correct the assessor's books, so as to show the true value of the property, as herein provided; but should any property escape assessment by the assessors or supervisors, in whole or in part, it may be assessed as provided in Section 3, Article 15 (4241).

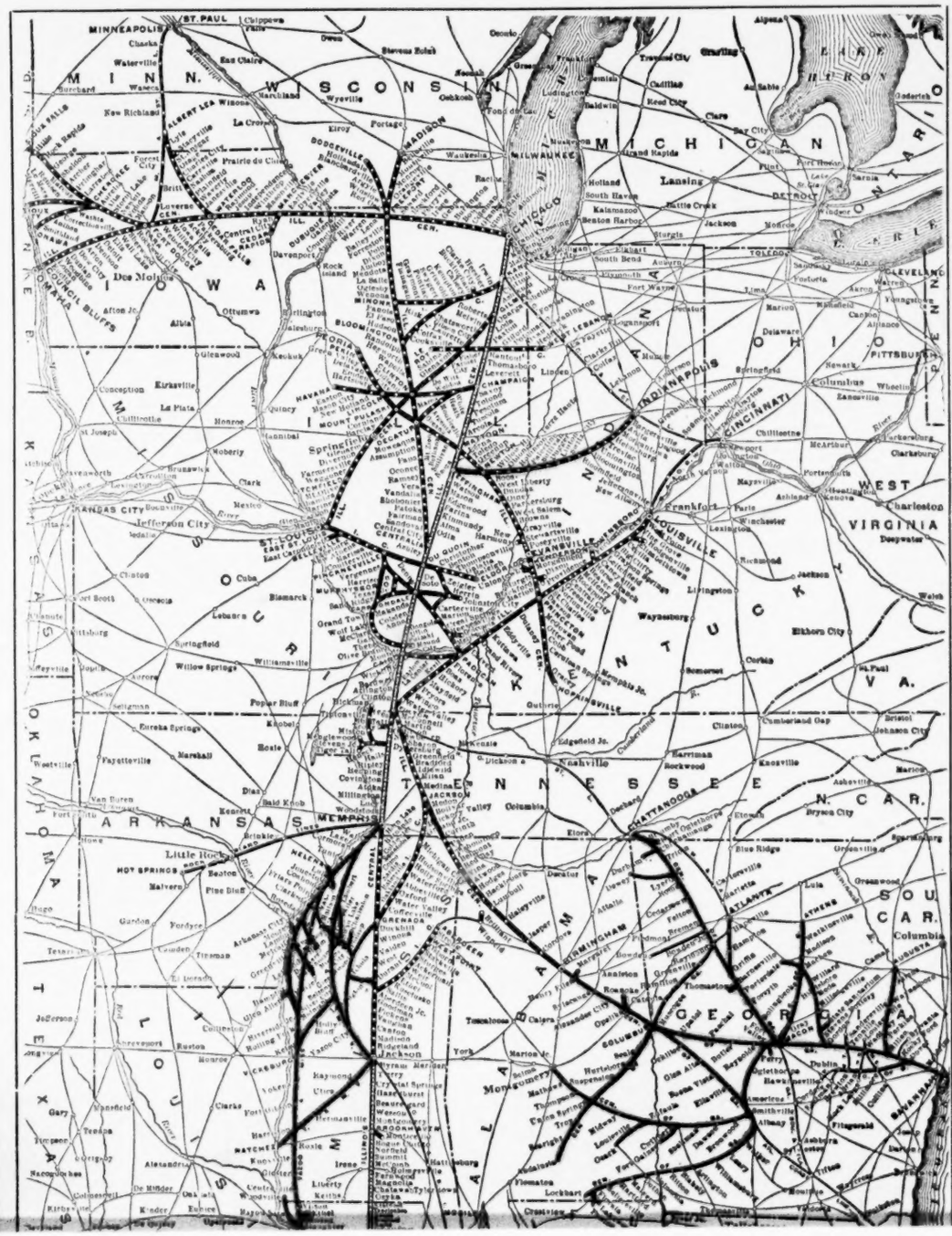
STATE BOARD OF EQUALIZATION.

No. 4268. APPOINTMENT—NUMBER—TERM—QUALIFICATIONS—QUORUM. It shall be the duty of the Governor to annually appoint one person for each appellate district of this State, and they, together with the Auditor of Public Accounts, who shall be an *ex-officio* member without additional compensation, shall constitute a State Board of Equalization and Assessment. No person shall be eligible to appointment on the board by the Governor who is under thirty years old, and he shall be a housekeeper and shall be the owner in fee of real estate located in this State. The members of this board shall hold this office for a period of one year, and until their successors are appointed and qualified. The term of office of said persons to be appointed as aforesaid shall begin on the first day of January, one thousand nine hundred and three, and annually thereafter. It shall require five members of said board present to constitute a quorum: Provided, That all seven members of said board to be appointed under the provisions of this act on the first day of January, 1908, shall be appointed as follows: Three of same to serve for only two years, and their successors shall be appointed to serve for four years, and the remaining four members appointed on January first, 1908, shall be appointed to serve for four years, and their successors shall be appointed to serve for a period of four years; and all members of said board appointed after 1908 shall serve for a term of four years; and said board shall complete its labors not later than the first day of June in each year.

No. 4274. PERCENTAGE OF VALUES FIXED—NOTICE TO COUNTY JUDGES—HEARING WITNESSES. The said board of equalization shall fix the percentage of assessed value of real property at its fair cash value, and all counties whose average lists of real property fall below such value shall be raised to the same, and all those counties whose average lists are above the same, shall be lowered to said cash value. The secretary

to the State Board of Equalization shall report to the various county judges of this Commonwealth, as soon as possible, the action of the board in regard to their respective counties, whereupon said judges may, in their discretion, each appoint not exceeding five witnesses to appear under oath before said board in reference to the action of the board. The board shall then revise their action or not, as they may think just and proper. Said witnesses must appear in a reasonable time, or they shall lose their right to be heard. The compensation and expenses of said witnesses, if any, shall be paid by their respective county courts.

No. 4275. PERSONAL PROPERTY. The said board of equalization shall also equalize the personal property of every county in this Commonwealth by adding to or subtracting from the list of personal property, as the case may be, the same per centum as was added to or subtracted from the list of farm lands for the same county, and for this purpose the average per centum of assessed value to cash value of farm lands shall be used, and in determining such per centum, fractions less than one-half shall be rejected, and fractions of one-half or over shall be counted as one.


MINNEAPOLIS
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S O U T H C A R.
N. CAR.
VA.
WEST VIRGINIA
LAKE MICHIGAN
LAKE ERIE
Des Moines
Council Bluffs
Omaha
Kansas City
Jefferson City
St. Louis
Springfield
Chicago
Milwaukee
Madison
Green Bay
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Cleveland
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Memphis
Little Rock
Hot Springs
Atlanta
Birmingham
Montgomery
Chattanooga
Knoxville
Shreveport
New Orleans
Vicksburg
Natchez
Meridian
Mobile
Pittsburgh
Charleston
Richmond
Cumberland Gap
Bristol
Johnson City
Asheville
Greenville
Spartanburg
Columbia
Augusta
Savannah
Macon
Atlanta
Athens
Chicago
Milwaukee
Madison
Green Bay
Lansing
Detroit
Toledo
Cleveland
Columbus
Cincinnati
Indianapolis
Louisville
Frankfort
Lexington
Nashville
Memphis
Little Rock
Hot Springs
Atlanta
Birmingham
Montgomery
Chattanooga
Knoxville
Shreveport
New Orleans
Vicksburg
Natchez
Meridian
Mobile
Pittsburgh
Charleston
Richmond
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SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1916.

No. 642.

ILLINOIS CENTRAL RAILROAD CO.

vs.

R. L. GREENE ET AL.

No. 643.

R. L. GREENE ET AL.

vs.

ILLINOIS CENTRAL RAILROAD CO.

No. 644.

ILLINOIS CENTRAL RAILROAD CO.

vs.

R. L. GREENE ET AL.

No. 645.

R. L. GREENE ET AL.

vs.

ILLINOIS CENTRAL RAILROAD CO.

REPLY BRIEF OF ILLINOIS CENTRAL RAILROAD CO.

BLEWETT LEE,
EDMUND F. TRABUE,
Counsel.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1916.

No. 642.

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REPLY BRIEF OF ILLINOIS CENTRAL RAILROAD CO.

The brief for Greene *et al.* seems to need no reply, except, possibly, upon the following points: (*a*) that the Kentucky Constitution, section 182, provided for classification of rail-

road property for taxation; (*b*) that the Kentucky Court of Appeals had construed section 182 as making such provision, and (*c*) that W. L. Tarbet, complainant's witness, was self-contradictory.

I.

True Construction of Section 182, Constitution.

If defendants' contention on the construction of section 182, State constitution, were maintainable they would not have advanced a step, because the legislature has never classified railroad property (if authorized so to do), except for *"assessment"* and *"collection"* of taxes; *Kentucky Stats.*, Sec. 4096, *et seq.;* Sec. 4077, *et seq.; Appendix,* Brief, pp. 163, 158.

This is conclusive against defendants' point—but the point, itself, on the constitution is not maintainable.

If there had been force in defendants' point it would have been urged in the district court, before a Kentucky judge; but his opinions show the contrary (209 Fed. Rep., 446, *et seq.;* 230 Fed., 206, *et seq.*). These opinions are elaborate and comprehensive and show that no such point as is now urged was made below.

The district court did mention *Lou. Ry. Co. vs. Com.,* 105 Ky., 710 (230 Fed. R., 214), but only to name it as an additional case that Judge Taft might have repudiated in *Taylor vs. Lou. & Nash. R. R. Co.*

Nor was the point made in this court in *Coulter vs. Lou. & Nash. R. R.,* 196 U. S., 599, as appears both by the opinion and the summary of arguments of counsel.

The point comes, therefore, as a rather late discovery. But it is without merit on any score.

The contention is destroyed by the language of section 182 itself, for it provides for nothing but the method of

"assessment" and of *"collection."* The provision is (defendants' brief, page 53):

> "Railroads—Assessment of: Nothing in this Constitution shall be construed to prevent the General Assembly from providing, by law, how railroads and railroad property shall be assessed and how taxes thereon shall be collected. And, until otherwise provided, the present law on said subject shall remain in force." (See sec. 4096, Ky. Stat.)

If the bare perusal of this provision were insufficient to refute defendants' contention, it would only be necessary to refer to the reason for its adoption, as shown by its history. Before the date of the present Constitution (Sept. 27, 1891) the principal railroad companies of the State contested the statute providing for the assessment of railroad property by the railroad commission, and the statutory method to be pursued by the commission. They claimed that in such a method the railroads were not given the same notice and opportunity for hearing as was afforded other corporations and individuals. This court (115 U. S., 321), affirming the judgment of the Kentucky court (81 Ky., 492, 512), held that the difference in conditions made it just and proper that railroad property should be assessed as a unit, and not by fragmentary assessment in the several counties, as other property was assessed; and that the denial of the usual fragmentary assessment was no discrimination against the railroads.

The statutory scheme of assessment is set out in full in the opinion of this court in *Cin., N. O. & Texas Pac. R. R. Co. vs. Kentucky* (115 U. S., 321, Nov. 16, 1885), and is identical in principle with the present statutory method of assessment embodied in the Kentucky statutes, *section 4096, et seq.*

The concluding words, therefore, of section 182 of the Constitution, namely, "until otherwise provided, the present law on said subject shall remain in force," indicate clearly that the provisions of section 182 were to preserve from repeal

the existing method of assessing and collecting railroad taxes embodied in the law aforesaid, *in view of the uniformity provisions of the new Constitution*, the convention being reminded of the litigation on the subject in the cases just cited.

There is nothing whatever in the Constitution to indicate any intention to authorize the classification of railroad property for any purpose, except for *assessment* and *collection* of taxes.

II.

Judicial Constructon of Section 182.

Nor has the Kentucky court so construed the Constitution as to authorize defendants' contention that section 182 gives the right of classification of railroad property for taxation. Section 174 provides for uniformity with reference to all kinds of property, and for the same tax rate for corporate as for individual property, and section 182 makes exception solely, as aforesaid, with reference to "assessment" and "collection" of taxes. The argument, therefore, in our original brief remains unimpaired by reference to section 182 of the Constitution, and the authorities cited by defendants' brief, page 53, *et seq.;* viz., *Lou. Ry. Co. vs. Com.*, 105 Ky., 710; *Commonwealth vs. E. H. Taylor, Jr.*, 101 Ky., 325; 41 S. W., 11; *Commonwealth vs. Sou. Pac. Co.*, 134 Ky., 410; 120 S. W., 313; *Commonwealth vs. Sou. Pac. Co.*, 150 Ky., 97; 149 S. W., 1106.

In *Commonwealth vs. Taylor* the point decided was that the assessment of distilled spirits by the *Board of Valuation and Assessment* while other property was assessed by the county assessors was no infringement of the rights of the distiller. The court pointed out the unique situation of distilled spirits in view of the Government's prior lien for taxes and incidental possession and control of the spirits

during the United States bonded period, wherefore the propriety of the particular method of assessment. It also indicated that the State Constitution provided for the legislature's abolishing the office of assessor if it thought proper so to do. The court's reference to assessment of railroad property was incidental and *arguendo*, and made in answering the contention that the expression in the Constitution of the exception, aforesaid, from section 174, of railroad assessment negatived the right to except distilled spirits on the principle *expressio unius exclusio alterius*.

It will thus be seen, *first*, that the taxation of railroad property was not in issue, but referred to merely incidentally; and, *secondly*, that the *subject under consideration* was the method of *assessment* or selection of an *assessor*. Obviously, therefore, the language used by the court is irrelevant to the present point.

In *Commonwealth vs. Sou. Pac. Co.* (134 Ky., 410), the one point decided was that, inasmuch as the railroad company had no railroad in the State, and could not, therefore, be assessed strictly upon the mileage basis, the board was justified, at least as to the Commonwealth, in assessing the company's franchise in a lump sum, the company having accepted the assessment.

Commonwealth vs. Sou. Pac. Co. (150 Ky., 97), utterly fails to establish defendants' point. That case was decided in favor of the railway company. It was the State's agent who attacked the amendment to the statute. His points were that it infringed section 59, subsection 15, and section 174 (the uniformity clause of the Constitution). It was in considering the point on section 59, forbidding *"special legislation* regulating the levy, assessment, or collection of taxes" (149 S. W., 1108) that the court used the language quoted in defendants' brief (p. 55); but as to the point made on section 174, Constitution, the court said (p. 1109):

> "The statutes make no provision for any unequal or undervalued assessment. They exempt no prop-

> erty. They afford a full and possible method for ascertaining and fixing the value of such properties and making assessments thereon."

It thus appears not only that the court did no more than uphold the assessment, or valuation, scheme established previously and preserved by section 182 of the Constitution, *but that the court emphatically denied that the* intangible property of the corporation was so assessed as to make discrimination between it and individuals, whereby section 174 (the uniformity clause) would be violated. This authority is, therefore, against defendants.

A very strong affirmation of the necessity of maintaining uniformity of valuation under the present Constitution is the case of *Schuster vs. Louisville* (124 Ky., 189), where, after the amendment to the Constitution permitting the classification of property for certain municipal assessment, the court held that notwithstanding the right conferred upon the city to substitute a system of taxation by licenses and franchises for the ad valorem system, the other provisions of the State Constitution *requiring uniformity* necessitated that the taxes imposed in license and franchise taxation should be virtually the equivalent of ad valorem taxation upon other property.

III.

W. L. Tarbet's Testimony.

Mr. Tarbet is accused of self-contradiction (defendants' brief, p. 93). But he, himself, explains the apparent contradiction (Rec. 642, pp. 209, 210) by showing that he had not realized *at first* that the deduction of excess value and treasury securities was appropriate except in working one of the several methods of assessment; but afterward saw that

the several deductions were respectively applicable to some of the other methods.

Referring to the computations on page 25, Rec. 644, the first capitalization, amounting to $26,868,850.00, was based on the so-called "Kentucky Net Earnings" at 6 per cent, as defendants refused to adopt a higher rate. The corresponding figure in the typewritten statement of June 20, 1912, was based upon the "System" net earnings, and was $26,691,085.00. Afterward, Mr. Tarbet saw (Rec. 642, pp. 209, 210) his error. The correction for treasury securities was applicable to the stock and bonds method of assessment, but not to capitalization of earnings *if limited strictly to operating earnings;* but the correction for excess value outside the State was applicable to several methods, for the terminals and more valuable lands outside the State entered into every method of valuation.

IV.

An authority against the legality of the method adopted by defendants in their 1912 assessment (brief, p. 133) is *Hager vs. Am. Surety Co.*, 121 Ky., 791 (see brief, p. 129, and brief of Louisville & Nash. R. R. Co., pp. 46, *et seq.*).

V.

Correction of Errors.

There are errors in original brief which are now corrected, *viz:*

a. On *page 71,* the average value per mile of road stated as $38,000 is *outside,* and not *"in"* Kentucky.

b. On *page 142,* the writer fell into the district court's error in treating $23,679,180.00 as 80 per cent of $34,400,000.00. The true situation is shown at foot of page 151, *Rec., 633; Pet. for Rehearing.* The defendants made al-

lowance for *floods and strikes* $3,840,820.00, which was absorbed and lost by the court's adopting 80 per cent of $34,400,000.00.

Respectfully submitted.

BLEWETT LEE,
EDMUND F. TRABUE,
Counsel.

(32997)

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Supreme Court of the United States

(OCTOBER, 1916, TERM.)

NO. 642.

Illinois Central Railroad Company, - - - Appellant.

vs.

Robert L. Greene, Auditor of Public Accounts of Kentucky, et al., - - - - - Appellees.

NO. 644.

Same vs. Same.

NO. 643.

Robert L. Greene, Auditor of Public Accounts of Kentucky, et al., - - - - - Appellants,

vs.

Illinois Central Railroad Company, - - - Appellee.

NO. 645.

Same vs. Same.

BRIEF FOR THE STATE BOARD OF VALUATION AND ASSESSMENT OF KENTUCKY

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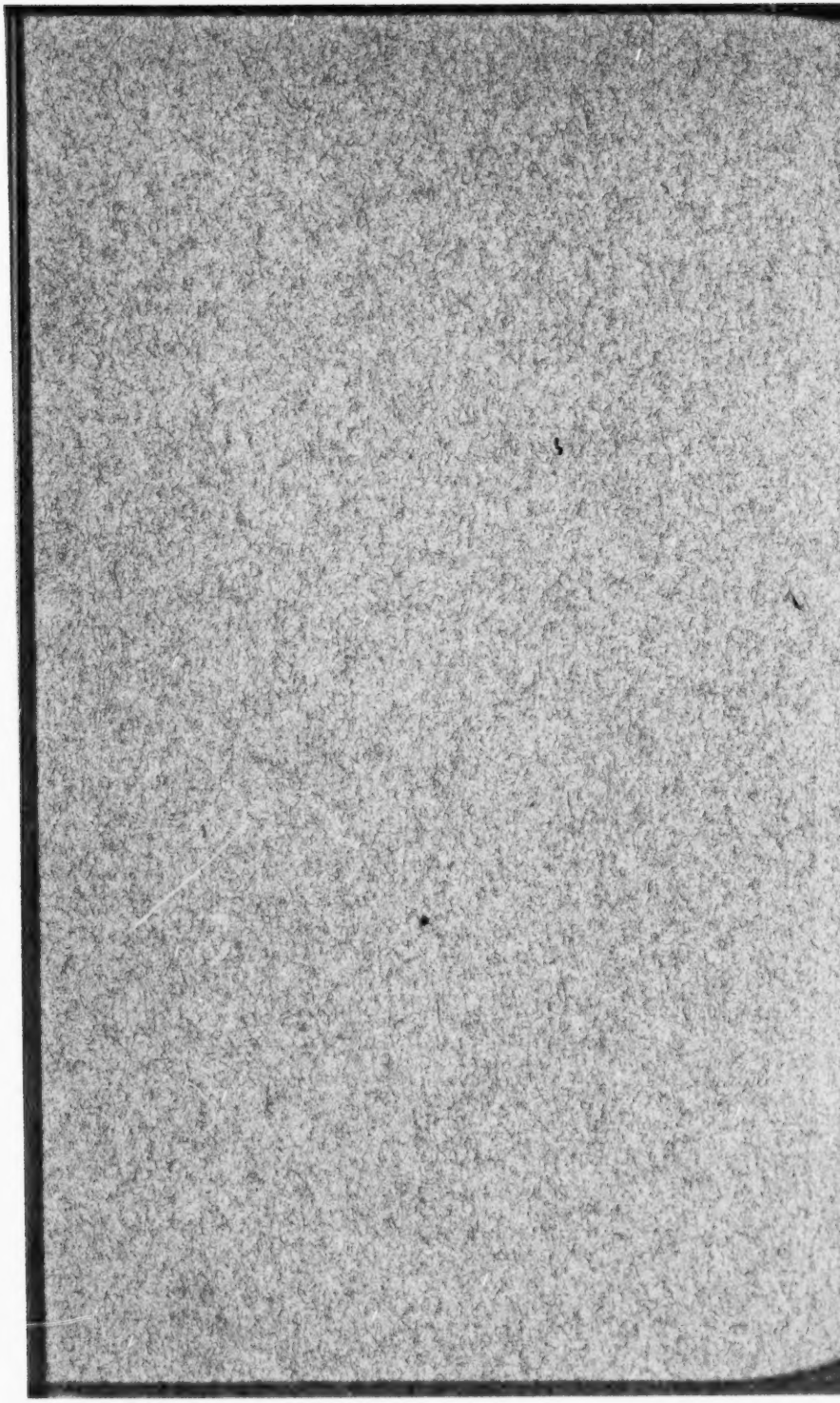

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Supreme Court of the United States

No. 642.

Illinois Central Railroad Company, - - - *Appellant,*

vs.

Robert L. Greene, Auditor; Sherman Goodpaster, Treasurer; James P. Lewis, Secretary of State, Constituting the Board of Valuation and Assessment for the State of Kentucky, et al., - - - - - - - - - *Appellees.*

No. 643.

Robert L. Greene, Auditor, et al., constituting the Board of Valuation and Assessment for the State of Kentucky, et al., - - - *Appellants,*

vs.

Illinois Central Railroad Company, - - - - *Appellee.*

No. 644.

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vs.

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Robert L. Greene, Auditor, et al., constituting the Board of Valuation and Assessment for the State of Kentucky, et al., - *Appellants.*

vs.

Illinois Central Railroad Company, - - - *Appellee.*

BRIEF FOR THE STATE BOARD OF VALUATION AND ASSESSMENT, APPELLEES.

STATEMENT OF CASE.

May it please the Court:

These suits were instituted in the District Court of the United States for the Eastern District of Kentucky, by the Illinois Central Railroad Company, an Illinois corporation, which owns and operates lines of railroad extending into and through the State of Kentucky, and other states of these United States, to enjoin the certification and collection of taxes which had been levied and assessed against its franchise for the State, counties and cities therein by the proper taxing officials of the State for the years of 1912 and 1913.

The defendants below, appellees here, are the Auditor, Treasurer and Secretary of State, respectively, of the State of Kentucky, who under the statutes of the State constitute the Board of Valuation and Assessment, which board was charged with the duty of assessing and did assess the franchises of appellant for taxation for these years. The plaintiffs below will be herein referred to as appellants, and the defendants below will be referred to as appellees.

A brief history of the cases may aid in their presentation. The final assessment on appellant's franchise for 1912 was made on August 31st of that year. On September 20, 1912, the appellant instituted suit in the District Court of the United States to enjoin the collection of the tax levied under the assessment, and upon ap-

plication, the court granted a temporary restraining order enjoining and restraining defendants from taking any action toward enforcing the claim of the State under the assessment until further orders of the court. On November 28, 1913, the District Court sustained the motion of appellant for a temporary injunction enjoining the defendants from taking any steps to enforce the collection of taxes on the assessment, provided the appellant pay certain amounts thereon which the court deemed equitable.

On January 4, 1914, the defendants made a final assessment on appellant's franchise for the year 1913, and on January 31, 1914, appellant filed suit in the District Court of the United States for the Eastern District of Kentucky, against the defendants to enjoin the certification or collection of taxes due under that assessment. A temporary restraining order was granted in the same terms as the order in the 1912 case.

Issues were made in both cases and on May 4, 1914, they were heard together though not consolidated. It was stipulated by counsel that all the evidence, oral or written, documents and affidavits offered and read as evidence at the trial should be treated and considered as evidence in each of them, as though the cases had been heard separately. On June 28, 1916, final decrees were entered therein.

The proceedings had in the District Court in the 1912 case are embodied in transcript Nos. 642 and 643 in this court and the proceedings in the 1913 case are embraced in transcript 644 and 645 in this court. They will be referred to herein as the 1912 and 1913 case.

The franchise tax levied and assessed against appellant under the statute and which is the subject of this action, is a tax levied and assessed against the property of corporations located in the State, and is not a

tax imposed on the privilege of doing business therein as might be inferred from a casual reading of the statute. In other words, the tax assailed in this action is purely a property tax as contradistinguished from a privilege tax.

This court so held in the case of Adams Express Co. vs. Kentucky, 166 U. S., 177-180. In construing the statute under which this assessment was made, it defined the character of the tax imposed by the provisions thereof, in this language:

"But taking the whole together, and in view of the provisions of Nos. 4078-4081, we agree with the circuit court that it is evident that the word 'franchise' was not employed in a technical sense, and that the legislative intention is plain that the entire property, tangible and intangible, of all foreign and domestic corporations, and all foreign and domestic companies possessing no franchise, should be valued as an entirety, the value of the tangible property be deducted and the value of the intangible property thus ascertained be taxed under these provisions.

"So far as the commerce clause and the 14th amendment of the Federal Constitution are concerned, this scheme of taxation is not in contravention thereof, as already determined in Adams Express Co. vs. Ohio State Auditor, 165 U. S., 194 (ante 683) and cases cited.

"And considered as a property tax, as in our opinion the prescribed exaction must be held to be, we regard it as in harmony with the provisions of the Constitution of the Commonwealth of Kentucky."

The appellants in this action challenge the validity of the tax levied and assessed against its franchise or property on the following grounds:

First: That plaintiff's property was assessed by the board, at practically its full value when other forms of taxable property in the State were generally, systematically, habitually and intentionally assessed by the

local assessors of the State at not exceeding 60% of its fair cash value, and this disparity between the assessments on different classes of property in the State was in violation of the rights guaranteed to appellant under the 14th amendment to the Constitution of the United States.

Second: That the assessment of appellant's franchise or property at its full value when other classes of property in the State was assessed at not exceeding 60% of its fair cash value was in violation of the rights guaranteed to appellant under the Constitution of the State of Kentucky.

Third: That the board in making the assessment against the franchise of appellant pursued an erroneous method and adopted a fundamentally wrong principle in that it did not follow the method prescribed by the statute when assessing the value of complainant's franchise.

Fourth: That the board in fixing the value of appellant's franchise adopted a rule or plan for arriving at its value different from that rule or plan adopted by the board when determining the value of the franchise of other like corporations in the State. That the discrimination between the assessments made on appellants' franchise and that made on other like companies was brought about in this manner. The board ascertained the value of appellant's franchise by capitalizing the net income of appellant derived in this State when this information was not available to the board in respect to other corporations in the State and thereby a more favorable rule was adopted in assessing some of the corporations in the State than was adopted by the board when assessing complainant.

Fifth: That the assessment against its franchise was fixed at an excessive, exorbitant and extravagant amount

by said board because of the financial straits of the Commonwealth and was made arbitrarily and without reference to the real value of the property of appellant for the purpose of casting an undue proportion of the burden of taxation on appellant and other like corporations. These allegations of the bill attempt to charge the defendants with fraudulent conduct while in the performance of their official duty.

In answer to these charges, the appellees say:

A. Equality and uniformity of taxation of all kinds of property in the State is not a right guaranteed the citizens and residents of a State under the Federal Constitution.

B. That if it is true that the palintiff's property was assessed at its full value by the defendants as the statute and Constitution of the State require it should be assessed, and other forms of taxable property in the State, was assessed by the local assessors at less than its full value in defiance of the Constitution and statutes of the State which require that such property shall be assessed at full value, such action on the part of these assessing officers does not invalidate the assessment made against property of appellant.

C. The Constitution of the State of Kentucky provides that the legislature thereof may prescribe a different method or mode of assessing railroads and railroad property from that provided for assessing other forms of taxable property in the State. That the legislature has provided by law how railroads and railroad property shall be assessed and the scheme or plan adopted is in harmony with the Constitution of the State and is not repugnant to any provision of the Federal Constitution.

D. That the Board in estimating the value of appellant's franchise pursued the rule or mode prescribed by statute in such cases made and provided, and the val-

uation fixed thereon as a result of the application of the statutory rules was not in excess of the real value thereof: That there is no evidence in the record to substantitate the charges of fraud; that the board in assessing franchise of appellant did not adopt a different rule or method from that employed by it when assessing the franchise of other corporations belonging to the same class and there is no evidence in the record to prove this charge.

E. If it is true that other property in the State is undervalued for assessment purposes, and if it be conceded that such an undervaluation is a just ground of complaint, complainant must also show, in order to obtain relief, that such undervaluation was systematic, intentional and designedly made for the purpose of casting a heavier burden of taxation upon that class of property owned by appellant and with the design to favor other classes of property in the State. As Justice Holmes said in the case of Coulter vs. L. & N. R. R., 196 U. S., 599.

"It is not contended that a mere undervaluation would be enough. It is admitted it must have been systematic and intentional. Inequality, we repeat, is nothing, unless it was made in pursuance of a scheme."

There is no competent evidence in the record that would justify the conclusion that other forms of property in the State was designedly or otherwise assessed at less than its fair cash value.

F. That the judgment of the board as to the value of appellant's property is final and conclusive and will not be overthrown by the court unless it appears the board was actuated by fraudulent motives which resulted in an unjust or prejudicial assessment against the property of appellant; or that the amount fixed as the assessment on appellant's property by the board was so excessive and unreasonably high that if enforced it would

amount to a confiscation or spoliation of appellant's property under the guise of the imposition of a tax.

G. That so much of appellant's complaint as seeks to enjoin the collection of the tax due the State on the assessment complained of is a suit against the State and cannot be maintained. This proposition has been fully presented in brief in Louisville Railway case and will not be repeated here.

The District Court granted appellant a temporary injunction against the defendants, restraining them from certifying or collecting the taxes due the State, counties and cities therein on the assessment complained of, upon condition that appellant pay taxes upon an amount which the court deemed equitable under the circumstances.

In order to understand clearly the questions presented on this appeal, it should be well at this time to review those provisions of the Constitution of the State and the statutes thereof relating to the assessment and taxation of all forms of taxable property within its border.

The Constitution and statutes of the State provide that all property in the State subject to taxation therein, whether owned by natural persons or corporations, shall be assessed by the assessor thereof at its fair cash value estimated at the price it would bring at a fair voluntary sale. Section 182 of the Constitution provides the legislature may provide how railroads and railroad property shall be assessed. The constitutional provisions of the State with reference to the assessment of all property therein are embraced in sections 171, 172, 174, 181 and 182 of that instrument. These sections are set forth in full in the appedix hereto.

"171. *Levy and Collection of by General Laws—Uniformity.*—The General Assembly shall provide by law an annual tax, which, with other resources, shall be sufficient to defray the estimated expenses of the Common-

wealth for each fiscal year. Taxes shall be levied and collected for public purposes only. They shall be uniform upon all property subject to taxation within the territorial limits of the authority levying the tax; and all taxes shall be levied and collected by general laws. (See Sec. 4019 Ky. Stat.)"

"172. *Assessment—How Value Fixed—Penalty.*—All property, not exempted from taxation by this Constitution, shall be assessed for taxation at its fair cash value, estimated at the price it would bring at a fair voluntary sale; and any officer, or other person authorized to assess values for taxation, who shall commit any willful error in the performance of his duty, shall be deemed guilty of misfeasance, and upon conviction thereof shall forfeit his office, and be otherwise punished as may be provided by law. (See Sec. 4043 Ky. Stat.)"

"174. *Corporate, to be Taxed Like Individual Property—Incomes—Licenses—Franchises.*—All proprety, whether owned by natural persons or corporations, shall be taxed in proportion to its value, unless exempted by this Constitution; and all corporate property shall pay the same rate of taxation paid by individual property. Nothing in this Constitution shall be construed to prevent the General Assembly from providing for taxation based on income, licenses or franchises. (See further as to licenses and franchise tax, Sec. 181.)"

"182. *Railroads—Assessment of.*—Nothing in this Constitution shall be construed to prevent the General Assembly from providing by law how railroads and railroad property shall be assessed and how taxes thereon shall be collected. And, until otherwise provided, the present law on said subject shall remain in force. (See Sec. 4096, Ky. Stat.)"

ASSESSORS OF THE STATE.

It is provided by the statutes that all real and personal property in the State shall be assessed by the local Assessor of each county therein, which officers are elected by the voters in their respective counties.

The tangible or physical property of all railroads in the State shall be assessed by the Railroad Commission of Kentucky, which Commission is created by provision of the State Constitution, and the members thereof are elected by the electors in their respective districts.

The franchises of all foreign and domestic corporations doing business within the State, subject to a franchise tax, shares of stock in State and National Banks and distilled spirits in bond are assessed by the Board of Valuation and Assessment, which board, as before stated, consists of the Auditor, Treasurer and Secretary of State. Thus it will be observed there are three classes of assessors provided for in the Constitution and laws of the State.

The manner and mode of assessing all real and personal property briefly described is as follows:

The County Assessor in each county from his knowledge and from the statement of the taxpayer listing his property for taxation and such other information that he may be able to obtain upon oath of witnesses, or otherwise, shall fix the value upon all the real estate and personal property listed with him for taxation by the taxpayers of the county at its fair cash value estimated at the price it would bring at a fair voluntary sale; and is required to enter the same in his tax book under the proper name and title of things. After the assessment of all property in the county has been made by the Assessor, his tax books are returned to the County Board of Supervisors, the members of which board are appointed by the County Judge of the county, and whose

duty it shall be to make a careful examination of the assessor's books, and in cases where the property has not been correctly valued, they shall fix the value thereof at its fair cash value and correct the books of the assessor so as to show the true value of the property; and should any property in the county escape assessment by the Assessor or Supervisor in whole or in part it may be assessed as provided by other sections of the Statutes.

The Assessor and deputies before entering upon their duties shall, in addition to the oath prescribed by the Constitution, take the following oath:

"I do swear that I will administer to every person listing property of any description the oath prescribed by law, and fix the value of all property to be listed by me at its fair cash value, estimated at the price it would bring at a fair voluntary sale, without favor or partiality; and I will diligently search and inquire so that no person shall be passed over, or fail to have an opportunity to give a list of his taxable property, and that I will truly report all persons who shall fail or refuse to list their taxable property, after being duly called on by me for that purpose, or who have given in a false or fraudulent list, so help me God."

(Ky. Statutes. See 4044, page II., Appendix).

After the Assessor shall have returned his tax books to and the same have been corrected by the Board of Supervisors, in order to obtain his pay, he must subscribe to the following affidavit:

"I do swear that I have not received from any person a list of taxable property and returned the same until the person rendering the list has made oath to the truth and value of the same; and I do futher swear that I have in no instance assessed any property at a greater or less sum than I deem a fair cash value, estimated at the price it would bring at a fair voluntary sale."

(See 4071 Ky. Statutes.)

After the property in each county has been assessed by the Assessors and corrected and supervised by the County Board of Supervisors thereof, the assessment as corrected is returned to the State Board of Equalization, the members of which Board are appointed by the Governor from the several districts in the State. It is the duty of this Board to examine the assessments of real and personal property of each county in the State and to fix the assessed value of all real and personal property in the several counties therein at its fair cash value; and all counties whose average lists of real and personal property shall fall below such value (fair cash value) shall be raised to its fair cash value and all those counties whose average lists are above the same (fair cash value) shall be lowered to said cash value.

The members of this Board before entering upon their duties are required to take the oath prescribed by the Statutes that they will honestly and faithfully discharge the duties of their office.

THE MODE OF ASSESSING THE TANGIBLE OR PHYSICAL PROPERTY OF A RAILROAD COMPANY IN THIS STATE.

The tangible property of a railroad company owning and operating lines of railway within the State is assessed by the Railroad Commission of the State. To enable the Commission to fix its valuations upon the physical property of railroads within the State, the Statutes require the President or chief officer of the company on or before the 1st day of August of each year, to file a report with the Auditor of the State, under oath, stating the length of its lines in the State and each county, city and town, and taxing district therein, together with the average value per mile thereof for the purpose of being operated as a carrier of freight and passengers, including its engines and cars and list of

depot grounds and improvements, and all other real estate.

The Auditor is required to lay this report before the Railroad Commission before the 15th day of August of the same year, together with any valuation he may have made, whereupon said Commission fixes a valuation upon the tangible property of the company.

(See Sections 4095 to 4098, Carroll's Ed. Kentucky Statutes). (All in Appendix.)

THE STATUTES RELATING TO THE ASSESSMENT OF FRANCHISES OF CORPORATIONS.

The statutes provide every railway company or corporation, gas company, water company and many other companies or corporations (naming them) and every other corporation, company or association having or exercising any special or exclusive privilege or franchise not allowed by law to natural persons or performing any public service shall in addition to the other taxes imposed on it by law annually pay a tax on its franchise to the State and a local tax thereon to the county, incorporated city, town or district, where its franchise may be exercised. It creates a board (the Board of Valuation and Assessment) and imposes upon that Board the duty of fixing the value of the franchises of all of said companies, for taxation. The act makes it the duty of the Attorney General, when requested by the Board, to attend its meetings and advise with same in its proceedings.

To enable said board to determine the value of the franchise of a corporation subject to taxation, the corporation, through its officers, is required to file with the Auditor, a verified report stating certain facts relating to the value of its property and is also required to state the fair cash value of its property. From the statements contained in said report and from any other evidence it may have the board "shall fix the value of

the capital stock of the corporation and from the amount thus fixed shall deduct the assessed value of all tangible property in this State or the counties where situated. The remainder thus found shall be the value of its corporate franchise."

It is important to note at this time that the words "Capital Stock" as used in the Statute have been construed to mean the entire property of the corporation or company under consideration.

In the case of the Henderson Bridge Co. vs. Commonwealth, 99 Kentucky, page 640, the court said:

"All this indicating, as clearly as possible for language to indicate, that the object of the Legislature was that the Board of Valuation and Assessment should then be enabled to form a correct estimate of the value of the entire property of the company or corporation whose case they were investigating.

"Then follows the clause in Section 4079 before quoted, requiring the board from the statement and from all other evidence before it, to proceed to fix the value of the capital stock (meaning the entire property), of the company or corporation, and that from the amount thus fixed that they shall deduct the assessed value of the tangible property of the company or corporation assessed in the State or in the county where situated, and that the balance thus found should be the corporate franchise subject to taxation as aforesaid.

"So that the question returns, Did the Legislature mean by that expression, 'capital stock,' only the amount of money that may have been paid in by the stockholders, or did it mean to embrace and include by that term, the entire property of every kind and description, tangible and intangible, embracing not only capital stock originally paid, but all property afterwards acquired and then owned by the company, as well as any surplus, undivided profts then on hand and all other assets, as well as the franchise?

"In the light of the foregoing provisions of the Constitution, and of the Act of the Legislature and of

the instruction given to the Board of Valuation and Assessment, and the sworn statement demanded by the President of the company, on which, with other testimony to make this valuation, we are constrained to say that by this term, 'capital stock' the Legislature meant to include the entire property, real and personal, tangible and intangible, all assets on hand, and its franchise as well, and that when so embraced and construed and valued as an entirety, then to take off the tangible property already assessed, and that the net balance will show, and shall be the value of the franchise to be taxed under section 4077."

This definition of the words, "capital stock," has been adhered to in all cases that have since come before the State Court, and was expressly approved by this court in Henderson Bridge Co. vs. Kentucky, 166 U. S. 152.

In the case of the Commonwealth vs. Ledman, reported in 127 Ky., 621, the Court of Appeals, in construing this statute, say:

"Under section 4079 of the Kentucky Statutes, 1903, the duty of the Board of Valuation and Assessment was to value the capital stock of the railway company and in order to do this it had to take into consideration in its valuation every element of property, tangible or intangible, owned by that company. In fixing this valuation, the Board is not governed by the property value of the railway company's shares (as decided in Henderson Bridge Company vs. Commonwealth, 99 Ky. 389, 31 S. W. 486, 29 L. R. A. 73), but it must take into consideration its franchise, its earning capacity, and its assets of every description. From the report, as filed by the company, and such other information as it may possess, it assesses the property at a fair valuation."

In the case of Commonwealth of Kentucky vs. L. & N. R. R. Co., 142 Ky. 663, the court said:

"From the foregoing statutes, it is apparent that it was the legislative intent that all property, of every kind and description, owned by a railroad company in this State, should be taxed by one or the other of these boards. The real estate is clearly to be taxed by the Railroad Commission and the intangible property by the Board of Valuation and Assessment; but in as much as the Board of Valuation and Assessment, in arriving at the value of the franchise, must deduct from the total of the value fixed by it upon the capital stock of the company, the assessed value of its tangible property, as found by the Railroad Commission, it is readily seen that the assessment is at last made by the Board of Valuation and Assessment. The information which the railroad is required to give, should be ample to enable this board to arrive at a fair and just valuation of the franchise; but if the information given in such report, is, in the opinion of the Board of Valuation and Assessment, not sufficient, the statute expressly authorizes it to receive other information in order that it may arrive at a fair valuation."

Section 4081, (page XIV, Appendix), provides, that the board in assessing the franchise of a railroad company the lines of which extend beyond the limits of the State (this embraces appellant) the "board will fix the value of the capital stock as hereinbefore provided and that proportion of the capital stock which the length of the lines operated, owned, leased or controlled in this State bears to the total length of the lines owned, leased or controlled in this State and elsewhere, shall be considered in fixing the value of the corporate franchise of such corporation liable for taxation in this State; and such corporate franchise shall be liable to taxation in each county, incorporated city, town or district through or into which lines pass."

The statute does not require that the board in assessing the franchise of an interstate corporation shall apportion the capital stock or property thereof on a

mileage basis. If it should appear in proof before the board that the property of the corporation under consideration was less or more valuable than its property outside the State, then due allowance and consideration should be given that fact; but, as the question of the proper ratio of apportionment was not raised in this case, no authorities on this provision of the statutes are cited.

After the board has fixed the value of the franchises of the corporation in the State for taxation, the statute provides it shall be the duty of the Auditor immediately after fixing such values by said board, to notify the corporation of the fact, and all such corporations shall have thirty days from the time of receiving the notice to go before the board and ask for a change of the valuation, and may introduce any evidence it may have as to the value of its property, and the chairman of the board is authorized to summons and swear witnesses and, after hearing all the evidence, the board may change the valuation as it may deem proper, and the action of the board shall be final.

(See section 4083, Carroll's Ed. Ky. Statutes, page XIV., Appendix.)

From the foregoing it will be observed the corporation is given a full opportunity to be heard, and if the evidence given before the board at the hearing, provided for in the statute, supports the finding as to values, then the courts will not overthrow the assessment.

The Auditor is required, at the expiration of thirty days after the final assessment is made, to certify to the County Clerks of the several counties in the state the proportion of the franchise of the corporations subject to taxation in the counties, cities and towns therein.

This suit seeks to restrain the Auditor from certifying the valuation made on franchise of appellant to the

various taxing districts in the State as the statute requires, and to enjoin the Attorney General from instituting penal prosecution against the appellant for its failure to pay the State the taxes when due.

For the convenience of the court the statutes relating to the assessment and taxation of all property in the State are set forth in full in the appendix to this brief.

The statutes under which the tax assailed in this action was levied and assessed have been held by the Court of Appeals of the State of Kentucky and by this court to be in harmony with the provisions of the Constitution of the State and not repugnant to any provision of the Federal Constitution.

In the case of the Louisville Street Railway Company vs. Commonwealth of Kentucky, reported in 105 Kentucky, page 710, the Court said:

"This Court has so often recognized the constitutionality of the act creating the Board of Valuation and Assessment that it is unnecessary to reconsider the matter here."

In the case of the Southern Railroad in Kentucky, etc., vs. Coulter, etc., reported in 113 Kentucky, page 657, the Court in discussing the statute under which this tax was levied and assessed, held:

1. "Kentucky Stautes 4077-4081 providing that every railway corporation and every corporation of various other kinds shall pay a tax on its franchise to the State and a local tax thereon to the various counties, cities and towns and providing that the State Board of Valuation and Assessment shall fix the value of the franchise for that purpose are constitutional."

In the case of Henderson Bridge Company vs. Kentucky, reported in 166 U. S., page 150-154 and 41 L. Ed.,

pages 950-954, this Court in passing upon the question of the constitutionality of the Statute under which the franchise tax was levied and assessed said:

"The tax in controversy was nothing more than a tax on the intangible property of the company in Kentucky, and was sustained as such by the Court of Appeals, as consistent with the provisions of the Constitution of Kentucky in reference to taxation.

"And for the reasons given, and on the authorities cited in Sandford v. Poe ('Adams Exp. Co. v. Ohio State Auditor,' 165 U. S. 155) 194 (ante, 683), we are unable to conclude that the method of taxation prescribed by the Statute of Kentucky and followed in making this assessment is in violation of the Constitution of the United States."

This Court said in the case of Adams Express Co. vs. Kentucky, 166 U. S. 177-180:

"And considered as a property tax, as in our opinion the prescribed exaction must be held to be, we regard it as in harmony with the provisions of the Constitution of the Commonwealth of Kentucky."

Upon final submission, the District Court held:

First: The board did not violate the statutory method prescribed for finding franchise values as charged by appellant in that it did not first find the total value of the capital stock or all the property of appellant wherever situated, and then deduct therefrom the value of all its tangible property wherever situated and apportion the remainder to the State on the mileage basis; and consider the sum thus found to be the value of Appellant's franchise in the State. The Court also sustained the finding of the board in respect to the value ascribed to appellant's property in the State and held there was no fraud shown or proved.

Second: The Court found from the evidence that other forms of taxable property in the State was generally assessed at not exceeding 60 per cent. of its fair cash value and held that any assessment on complainant's franchise in excess of 60 per cent. of its real value was violative of the 14th Amendment to the Constitution of the United States and void to that extent.

The Court said (see opinion on motion for preliminary injunction page 90, Transcript 642 and 643):

"No complaint seems to have been made by plaintiff on its want of notice of how the assessment was arrived at nor is the absence of such notice made a ground of attack on the assessment complained of. The sole grounds of attack which are made thereon are that the board after fixing the value of the capital stock did not first deduct the value of the entire tangible property before apportioning a part thereof to this State—that it arrived at its value of the capital stock in this State by capitalizing the net earnings in this State at 6 per cent. and taking 80 per cent. thereof—and that it is in violation of the 14th Amendment in that it denies plaintiff the equal protection of the laws. The first ground of attack is not well taken, as I have held in the Louisville and Nashville Railroad Company case. The second ground of attack is denied by the board. The last ground is well taken but it invalidates the assessment only to the extent that the valuation placed on part of plaintiff's capital stock in this State exceeds the percentage at which other property is assessed."

In its opinion on submission for final decree, the Court said:

"There is nothing left in this case but to make a final disposition of plaintiff's attack on the assessment complained of that it was contrary to the 14th Amendment. In granting the preliminary injunction, I take it that the board has found the fair cash value of the portion of plaintiff's capital stock in this State to be $27,124,240.00

and equalized it on a basis of 70 per cent. I have held that the equalization should be on the basis of 60 per cent. The correction should also be made in the matter of the sum which the board found the fair cash value of such portion to be ." (See page 160 Transcript, 642 and 643.)

The final decree in 1912 case provides that complainant pay to the State, counties and towns therein, taxes on its franchise based on a total valuation thereof at $7,965,797.00, which amount was $1,347,212.00 in excess of the valuation the court had provided the complainant should pay to the State and counties therein as a condition precedent to granting the preliminary injunction, and enjoined the officials of the State from proceeding to collect from complainant taxes on any greater valuation than the sum above mentioned.

(See pages 160 and 161 of Transcript, 642 and 643.)

From so much of the decree in the 1912 case as provides that there is due the State taxes on valuation of $1,347,212.00 in addition to the amount complainant was required to pay when the Court granted a preliminary injunction, the appellant has prosecuted an appeal to this court.

From so much of the decree as provides that the defendants are enjoined and restrained from proceeding to collect taxes on the entire assessment made against appellant's franchise for the year of 1912, appellees have prosecuted a cross appeal to this court.

The final decree in the 1913 case was similar in all respects to the decree entered in the 1912 case. The District Court in its opinion on motion for final decree in 1913 case, said:

"The plaintiff makes two attacks on the action of the board. One is in its apportioning a part of $280,000,000 to Kentucky on the mileage basis. The other is in its not equalizing the amount so apportioned thereto with the assessment of property generally therein by reducing

it 60 per cent of its fair cash value. No attack is made upon the percentage of apportionment which the board adopted in apportioning. The second attack will have to be sustained on the grounds set forth in my opinion in the L. & N. R. R. Co. cases. In valuing plaintiff's unit at $280,000,000, of which is apportioned to Kentucky $34,400,000 on the mileage basis, the board applied the standard of full fair cash value. It expressly finds $280,000,000 to be the fair cash value thereof. And property generally in this State is not assessed at much more than 60% of its fair cash value, probably at not as much as that. In no event, therefore, can the value of the portion of plaintiff's unit in Kentucky be taken to be more than 60% of $34,400,000 or $20,640,000. If taken to be that much and the assessed value of the tangible property, to-wit: $12,478,903, is deducted therefrom the value of plaintiff's franchise will be $8,161,097 or $2,161,067 in excess of what it has already paid."—(See Transcript 644 and 645, pages 143 and 144.)

The final decree therein provided that appellant should pay a franchise tax to the State, counties and cities therein based on a valuation of $2,161,067 in addition to the amount upon which it had been required to pay upon to-wit, $6,000,000.00, when the temporary injunction issued therein and the defendants were enjoined and restrained from collecting or attempting to collect taxes from appellant for that year on any greater sum or amount.

(See Transcript 644 and 645, page 175.)

From so much of the decree in the 1913 case as provides appellant is liable to pay a franchise tax to the State, counties and towns therein based upon a valuation of $2,161,067 in addition to the amount it had theretofore paid on, to-wit, $6,000,000.00 for the year 1913, the appellant prosecutes an appeal to this court.

From so much of said decree as provides that the defendants are enjoined from collecting or attempting to collect taxes from appellant on the entire assessment

made against its franchise for the year of 1913, appellees have prosecuted a cross appeal to this court.

They assign for errors in each case:

1. The action of the court in overruling defendant's motion to dismiss on the ground that the District Court has no jurisdiction to hear this cause.

2. The action of the court in overruling defendant's motion to dismiss on the grounds that the bill of complaint shows no equity on its face.

3. The action of the court in overruling defendant's motion to dismiss on the grounds that plaintiff has an adequate remedy at law.

4. The action of the court in overruling defendant's motion to dismiss on the grounds that the bill states no cause of action against the defendants or either of them under the laws of this State or under the laws of the United States.

5. The action of the court in overruling defendant's motion to dismiss on the grounds that this is a suit against the State of Kentucky.

6. The action of the court in holding in the decree that plaintiff's property should not be assessed at more than 60% of its fair cash value estimated at the price it would bring at a fair voluntary sale for the supposed reason or for the reason that other property in the State, or a great bulk of the other property in the State, is habitually, willfully, intentionally and systematically assessed at not more than 60 per cent. of the price it would bring at a fair voluntary sale.

7. The action of the court in holding that other property in the State, or a great bulk of other property in the State, is habitually, intentionally and systematically assessed at not more than 60 per cent of its fair cash value estimated at the price it would bring at a fair voluntary sale.

8. The action of the court in holding that the Board of Valuation and Assessment followed a fundamentally wrong method in assessing plaintiff's property for taxation.

9. The action of the court in granting a decree enjoining the collection of taxes by the State of Kentucky and the county and taxing districts in the State, based upon an assessment greater than 60 per cent of the fair cash value of plaintiff's property estimated at the price it would bring at a fair voluntary sale.

10. The action of the court in holding any part of the assessment made by the Board of Valuation and Assessment of plaintiff's property void and in granting a decree enjoining the collection of any part of the taxes due based upon an assessment of plaintiff's property at the sum of $27,124,240.00.

ARGUMENT.

The appellant's bill of complaint is predicated upon the idea that the Constitution of the United States requires that all forms of taxable property within the confines of the State, shall be uniformly and equally assessed for taxation.

It avers that its property or franchise in Kentucky was assessed at full value when other forms of taxable property in the State were assessed at not more than 60% of its fair cash value and that such inequalities or lack of uniformity in assessments on different classes of property in the State was a violation of plaintiff's rights under the Federal Constitution.

The District Court held that appellant's cause of action against appellees was founded entirely upon the claim that the assessment was violative of the Fourteenth Amendment. That no other cause of action was stated in complainant's bill.

The District Court in its opinion on motion for final decree in 1912 case, said:

"There is nothing left in this case but to make a final disposition of plaintiff's attack, on the assessment complained of, that it was contrary to the Fourteenth Amendment."—(See transcript 442 and 443, page 160.)

In opinion on motion for final decree in 1913 cases, the court said:

> "The plaintiff makes two attacks on the action of the board. One is in its apportioning a part of $280,000,000 to Kentucky on the mileage basis. The other is in its not equalizing the amount so apportioned thereto with the assessment of property generally therein by reducing it 60% of its fair cash value. No attack is made upon the percentage of apportionment which the board adopted in apportioning. The second attack will have to be sustained on the grounds set forth in my opinion in the L. & N. R. R. Company cases."

The Constitution of the United States does not require the several States of the Union to treat all subjects of taxation within its borders equally and uniformly in respect to taxation. A State may tax different classes of property located therein at a different rate and different valuation, so far as the Federal Constitution is concerned. It may tax one class of property within its borders and may provide that another class of property therein shall be exempt from taxation if its legislature so decrees.

The only restraint in matters of taxation imposed by the Federal Constitution is that all of a class of property or persons be treated alike and that the exaction levied in the form of a tax shall not be so burdensome as to amount to spoliation or confiscation of the subject's property.

In the case of Bell's Gap R. R. Co. vs. Commonwealth of Pennsylvania, reported in 134 U. S., 239; 33 L. Ed., 892, this court thoroughly discussed the question of the right of a State to adopt any system of taxation therein it may deem best. The court in that case said:

"This might have been subject to question under the State laws; but the State courts have upheld the assessment as valid. We are to accept it, therefore, as part of the State system of taxation, authorized by its Constitution and laws. Then how does it violate any provision of the Constitution of the United States? It is contended that it violates the first section of the XIV. Amendment, which forbids a State to withhold from any person the equal protection of the laws. We do not perceive that the assessment in question transgresses this provision. There is no unjust discrimination against any persons or corporations. The presumption is that corporate securities are worth their face value. Besides the person that holds them is not affected by the tax unless he receives his interest from which the tax is deducted. So long as the interest is paid the security has to him full productive value; when it is not paid he pays no tax.

"But, be this as it may, the law does not make any discrimination in this regard which the State is not competent to make. All corporate securities are subject to the same regulation. The provision in the XIV. Amendment, that no State shall deny to any person within its jurisdiction the equal protection of the laws, was not intended to prevent a State from adjusting its system of taxation in all proper and reasonable ways. It may, if it chooses, exempt certain classes of property from any taxation at all, such as churches, libraries and the property of charitable institutions. It may impose different specific taxes upon different trades and professions and may vary the rates of excise upon various products; it may tax real estate and personal property in a different manner; it may tax visible property only, and not tax securities for payment of money; it may allow deductions for indebtedness, or not allow them.

All such regulations, and those of like character, so long as they proceed within reasonable limits and general usage, are within the discretion of the State legislature, or the people of the State in framing their Constitution. But clear and hostile discriminations against particular persons and classes, especially such as are of an unusual character, unknown to the practice of our governments, might be obnoxious to the constitutional prohibition. It would, however, be impracticable and unwise to attempt to lay down any general rule or definition on the subject, that would include all cases. They must be decided as they arise. We think that we are safe in saying that the XIV. Amendment was not intended to compel the States to adopt an iron rule of equal taxation. If that were its proper construction, it would not only supersede all those constitutional provisions and laws of some of the States, whose object it is to secure equality of taxation, and which are usually accompanied with qualifications deemed material; but it would render nugatory those discriminations which the best interests of society require, which are necessary for the encouragement of needed and useful industries, and the discouragement of intemperance and vice, and which every State, in one form or another, deems it expedient to adopt."

The same rule had theretofore been announced in the case of Kirkland vs. Hotchkiss, 100 U. S., 491. The court said:

"We will not follow the interesting argument of counsel by entering upon an extended discussion of the principles upon which the power of taxation rests under our system of constitutional government. Nor is it at all necessary that we should now attempt to state all limitations which exist upon the exercise of that power, whether they arise from the essential principles of free government or from express constitutional provisions. We restrict our remarks to a single question the precise import of which will appear from the preceding statement of the more important facts in the case.

"In McCulloch vs. State of Maryland (4 Wheat., 428), this court considered very fully the nature and extent of the original right of taxation which remained with the State after adoption of the Federal Constitution. It was there said: 'That the power of taxing the people and their property is essential to the very existence of government, and may be legitimately exercised on the objects to which it is applicable to the utmost extent to which the government may choose to carry it.' Tracing the right of taxation to the source from which it was derived, the court further said: 'It is obvious that it is an incident of sovereignty, and is co-extensive with that to which it is an incident. All subjects over which the sovereign power of a State extends are objects of taxation, but those over which it does not extend are, upon the soundest principles, exempt from taxation.'

" 'This vital power,' said the court in Providence Bank vs. Billings (4 Pet., 563), 'may be abused; but the Constitution of the United States was not intended to furnish the corrective for every abuse of power which may be committed by the State governments. The interest, wisdom, and justice of the representative body, and its relations with its constituents, furnish the only security, when there is no express contract, against unjust and exclusive taxation, as well as against unwise legislation.'

"In St. Louis vs. The Ferry Company (11 Wall., 423), and in the State Tax on Foreign-held Bonds (15 Id., 300), the language of the court was equally emphatic.

"In the last named case we said that, 'unless restrained by provision of the Federal Constitution, the power of the State as to the mode, form and extent of taxation is unlimited, where the subjects to which it applies are within her jurisdiction.'

"We perceive no reason to modify the principles announced in these cases or to question their soundness. They are fundamental and vital in the relations which, under the Constitution, exist between the United States and the several States. Upon their strict observance depends, in no small degree, the harmonious and successful working of our complex system of governments, Federal and State. It may, therefore, be regarded as the established doctrine of this court, *that so long as the*

State, by its laws, prescribing the mode and subjects of taxation, does not entrench upon the legal authority of the Union or violate any rights recognized or secured, by the Constitution of the United States, this court, as between the State and its citizen, can afford him no relief against State taxation, however unjust, oppressive or onerous." (Italics ours.)

Justice Fields in the Delaware tax case, 18 Wall., page 231, said:

"The State may impose taxes upon the corporations as an entirety existing under its laws, as well as upon the capital stock of the corporation, or its separate corporate property. And the manner in which its value shall be assessed, and the rate of taxation, however arbitrary or capricious, are mere matters of legislative discretion. It is not for us to suggest in any case that a more equable mode of assessment or rate of taxation might be adopted than the one prescribed by the legislature of the State; our only concern is with the validity of the tax; all else lies beyond the domain of our jurisdiction."

If the amount of the assessment against appellant's property is not in excess of its fair cash value, the standard of valuation fixed by the Constitution and legislative enactments of the State for assessment purposes, and is otherwise agreeable to the Constitution and laws of the State, then it is a lawful assessment and can not be said to be obnoxious to the provisions of the Federal Constitution.

The District Judge in his opinion, after reviewing the statutory and constitutional provisions of the State in reference to the assessment and taxation of property therein, stated the Constitution and laws of the State of Kentucky provided for uniformity of taxation notwithstanding they also require that all property shall be assessed at its fair cash value, and held if other

classes of property in the State was assessed at 60% of its value and appellant's property was assessed at 80% of its value, appellant was thereby deprived of the rights guaranteed to it under the Fourteenth Amendment. The court said (see opinion L. & N. vs. Bosworth, 230 Fed. Rep., 211):

"As, then, the Constitution and statutes of this State require uniformity of taxation, notwithstanding they also require that it be assessed at its fair cash value, I conclude that, if the property in this State subject primarily to assessment by the county assessor was uniformly assessed for the year 1913 at less than 60 per cent. of its fair cash value, and the Board of Valuation and Assessment in assessing the plaintiff's franchise applied as to the portion of its unit in this State as the standard of valuation thereof full, fair cash value, or slightly less than or about 80 per cent. thereof, it violated the Fourteenth Amendment. This conclusion is a deduction from a consideration of the Fourteenth Amendment itself. I have viewed the alleged violation thereof to determine whether it was such from the standpoint of the amendment's real meaning—above its mere letter—i. e., as if it had in so many words said, instead of that no State shall deny, that neither the legislative, executive nor judicial department of the State shall deny."

An examination of the decisions of this court will plainly demonstrate the District Judge was in error in his fundamental assertion in this case, that any action on the part of the assessing officers of the State, in levying and assessing taxes on the different classes of property in the State, in a way or manner that violated the rule of uniformity and equality in the assessment of property constituted the taking property without due process of law in violation of the Federal Constitution.

IT IS WELL SETTLED BY THE DECISIONS OF THIS COURT THAT EQUALITY AND UNIFORMITY OF TAXATION IS NOT A RIGHT GUARANTEED BY THE FEDERAL CONSTITUTION.

In Coulter vs. Louisville & Nashville Railroad Company, 196 U. S., 597, a bill was filed to enjoin the collection of a franchise tax levied pursuant to an assessment made by the State Board of Valuation and Assessment of the State of Kentucky. It was there alleged, as in the case at bar, that the property of the complainant railroad company was assessed at its full cash value, while the properties of other persons and corporations throughout the State were assessed at a sum not exceeding 70 per cent. of their cash value. The question involved in that case was identical with the one here presented.

This court there held that such an assessment did not infringe on the right guaranteed complainant by the Fourteenth Amendment of the Federal Constitution and said:

"If it be a fact that the franchise of a Kentucky corporation is taxed at a different rate from the tangible property in the State, there can be no question that the State had power to tax it at a different rate, as far as the Constitution of the United States is concerned. (Bell's Gap R. Co. v. Pennsylvania, 134 U. S., 232; 33 L. Ed., 892; 10 Sup. Ct. Rep., 533; Merchants' and M. Nat. Bank v. Pennsylvania, 167 U. S., 461, 464; 42 L. Ed., 236, 237; 17 Sup. Ct. Rep., 829; Magoun v. Illinois Trust & Sav. Bank, 170 U. S., 283, 295; 42 L. Ed., 1037, 1043; 18 Sup. Ct. Rep., 594). It is doubtful, at least, if any further question should have been asked in this case." (Missouri vs. Dockery, 191 U. S., 165.)

The doctrine announced in the Coulter case, that the State had power to tax franchises at a different rate from the tangible property in the State so far as

the Constitution of the United States was concerned, was reaffirmed by this Court in Raymond vs. Traction Co., 207 U. S., 20. Justice Peckham, in stating the contention of complainant, used this language:

"It was also averred that there were hundreds of corporations subject to be assessed by such boards in the same manner that the appellee was assessed under writ of mandamus issued in respect to the taxes assessed against it, and that not one of such corporations was as a matter of fact so assessed, but a discriminating crushing tax burden was placed upon appellee and the other corporations mentioned in the writ, contrary to the provisions of the Constitution of the State of Illinois."

In deciding the question there presented this Court made it clear that the assessment in that case was illegal because of discrimination in the assessment on property of the same class. This learned Justice said:

"The case before us is one that the facts make exceptional. It is made entirely clear that the Board of Equalization did not equalize the assessments in the cases of these corporations, the effect of which was that they were levied upon a different principle or followed a different method from that adopted in the case of other like corporations whose property the board had assessed for the same year. It was not the mere action of individuals, but under the facts herein detailed it was the action of the State, through the board. *There is no contention of illegality simply because of assessing the franchises of these corporations at a different rate from tangible property in the State, which the State might do.* (Coulter v. Louisville and Nashville R. R. Co., 196 U. S., 599; 49 L. Ed., 615; 25 Sup. Ct. Rep., 342.) But it is asserted that the board assessed the franchises and other property of these companies at a different rate and by a different method from that which had been employed by the board for other corporations of the same class for that year. The result

is an enormous disparity and discrimination between the various assessments upon the corporation. * * *

"A system of valuation was adopted and applied to a large class of corporations, differing wholly from that applied to other corporations of the same class, and resulting in a discrimination against the appellee of the most serious and material nature. It is not a question of mere difference of opinion as to the valuation of property, but it is a question of difference of method in the manner of assessing property of the same kind." (Italics ours.)

The court decided in this case that lack of uniformity in the assessment of property of the same class was in violation of the Fourteenth Amendment, particularly when brought about by the coercion of the assessing officer.

In the case of the Merchants' and Manufacturers' National Bank vs. Commonwealth of Pennsylvania, 167 U. S., 462 and 464; 42 L. Ed., page 237, the Court said:

"But this lack of uniformity in the result furnishes no ground of complaint under the Federal Constitution. Suppose for any fair reason affecting only its internal affairs, the State should see fit to wholly exempt certain named corporations from all taxation. Of course, the indirect result would be that all other property might have to pay a little larger rate per cent. in order to raise the revenue necessary for carrying on the State government, but this would not invalidate the tax on other property, or give any right to challenge the law as obnoxious to the provisions of the Federal Constitution."

In State Railroad Tax Cases, 92 U. S., 575, 612, this court said:

"Perfect equality and perfect uniformity of taxation as regards individuals or corporations, of the different classes of property subject to taxation, is a

dream unrealized. It may be that the system that most clearly attains this is the best. But the most complete system that can be devised must, when we consider the immense variety of subjects which it necessarily embraces, be imperfect. And when we come to its application to the property of all the citizens, and of those who are not citizens, in all the localities of a large State like Illinois, the application being made by men whose judgment and opinions must vary as they are affected by all the circumstances brought to bear upon each individual, the result must inevitably partake largely of the imperfection of human nature and of the evidence on which human judgment is founded."

It will be observed that the above language was used in a case where the Circuit Court of the United States had acquired jurisdiction by reason of the diversity of citizenship of the parties, and where that Court was charged with the same duty as would be the State Court in enforcing the constitutional and statutory provisions of the State of Illinois, guaranteeing uniformity and equality of taxation.

In the case of the Florida C. & P. R. R. Co. vs. Reynolds' Comptroller, reported in 183 U. S., 471, 46 L. Ed., 283, it appears the State of Florida provided by statutory enactment that where railroad property had been omitted from assessment and taxation, that the Comptroller of the State might cause the property of the railroad companies to be assessed for State and county taxes for the years for which there had been an omission to assess the property. The statute did not provide that other forms of taxable property in the State could be so assessed. The railroad company filed its action to restrain the collection of omitted taxes assessed against its property and to recover other taxes so levied and paid in the past. The grounds alleged were that there was an unjust discrimination against the property of railroad companies by this legislation

which was forbidden by the Fourteenth Amendment to the Federal Constitution. The court said:

"The question of how far the provisions of the Fourteenth Amendment interfered with the State's system of taxation has been more than once before this court. It was carefully considered in Bell's Gap R. R. Co. of Pennsylvania. * * *

"It is well known that the States vary materially in their systems of taxation. Each determines for itself what in its judgment is best for the interests of its people. In some there are general exemptions of particular classes of property, such as property used for religious, educational and benevolent purposes. Some, in order to encourage certain industries, such as manufacturing, making either general or special exemptions. Some think it for their best interests to derive their revenues from personal property, corporations and licenses, and exempt real estate. In some contracts for exemption are authorized by the State Constitution; in others they are forbidden. Now, considering the great diversity in these systems, it would obviously have worked a marked revolution if the first section of the Fourteenth Amendment had been construed as compelling a cast-iron rule of equal taxation. It was not intended, as held in the case quoted from, and also in Barbier v. Conelly, 113 U. S., 27, 28 L. Ed., 923, 5 Sup. Ct. Rep., 357, to restrain the legislature from any proper and legitimate classification, both as respects property for taxation and the methods of assessment and taxation. Doubtless it would prohibit a State from selecting some obnoxious person, and casting upon his property the sole burden of taxation, or a burden differing from that cast upon others whose property was similarly situated; but it does not prevent a State from exercising its judgment as to the property to be taxed and the modes of taxation, providing all property similarly situated is treated in the same way. * * *

"In the light of these decisions, if the State of Florida had deemed it for the best interests of its people to encourage the building of railroads by exempting their property from taxation, such exemption could not

have been adjudged in conflict with the Fourteenth Amendment, even though thereby the burden of taxation upon other property in the State was largely increased. Indeed that was the policy of the State prior to the Constitution of 1868. And, conversely, if the State had subjected railroads to taxation, while exempting some other class of property, it would be difficult to find anything in the Fourteenth Amendment to overthrow its action. The mere fact that such legislation may operate with harshness is not of itself sufficient to justify the court in declaring it unconstitutional. These matters of classification are of State policy, to be determined by the State; and the Federal Government is not charged with the duty of supervising its action.

"If the State, as has been seen, has the power, in the first instance, to classify property for taxation, it has the same right of classification as to property which in past years has escaped taxation. We must assume that the legislature acts according to its judgment for the best interests of the State. A wrong intent cannot be imputed to it. It may have found that the railroad delinquent tax was large, and the delinquent tax on other property was small, and not worth the trouble of special provision therefor. If taxes are to be regarded as mere debts, then the effort of the State to collect from one debtor is not prejudiced by its failure to make like effort to collect from another. And if regarded in the truer light as a contribution to the support of the government, then it does not lie in the mouth of one called upon to make his contribution to complain that some other person has not been coerced into a like contribution."

Davidson vs. Board of Admrs. of New Orleans, 96 U. S., 97, was a writ of error sued out of this court to review a judgment of the Supreme Court of Louisiana, which latter judgment affirmed an assessment made against the property of plaintiff in error. It was argued in this court that the assessment in question was unequal, extortionate and in violation of the taxing laws of the State of Louisiana. This court held that a vio-

lation of the taxing laws of the State of Louisiana by the State officials and the making of an extortionate and unfair assessment did not infringe any right guaranteed by the Federal Constitution, and said (9:104):

"That whenever, by the laws of a State, or by State authority, a tax, assessment, servitude, or other burden is imposed upon property for the public use, whether it be of the whole State or of some more limited portion of the community, and those laws provide for a mode of confirming or contesting the charge thus imposed, in the ordinary courts of justice, with such notice to the person, or such proceeding in regard to the property as is appropriate to the nature of the case, the judgment in such proceedings can not be said to deprive the owner of his property without due process of law, however obnoxious it may be to objectors.

"It may violate some provisions of the State Constitution against unequal taxation; but the Federal Constitution imposes no restraints on the States in that regard."

Kelly vs. City of Pittsburg, 104 U. S., 78, was a writ of error to the Supreme Court of Pennsylvania, brought to review a judgment of that court affirming the validity of a tax assessed by the city of Pittsburg against the property of the plaintiff in error. The plaintiff in error in that case alleged that his property was assessed at a sum "enormously beyond its value, and which, he alleges, is almost destructive to his interest in the property." It was also alleged that the land of the plaintiff in error was a farm used for agricultural purposes and that it was assessed and valued as city lots; and this court said:

"It is alleged, and probably with truth, that the estimate of the value of this land for taxation is very greatly in excess of its true value."

This court held that the above fact did not raise a Federal question, and said (page 83):

"This court cannot say in such cases, however great the hardship or unequal the burden, that the tax collected for such purposes is taking the property of the tax payer without due process of law."

In Merchants' & Mfrs.' Nat. Bank vs. Pennsylvania, 167 U. S., 461-4, this court said:

"This whole argument of a right under the Federal Constitution to challenge a tax law on the ground of unequality in the burdens resulting from the operation of the law is put at rest by the decision in the Bells Gap R. Co. vs. Pennsylvania, 134 U. S., 2324."

And in Travelers' Insurance Co. vs. Connecticut, 185 U. S., 364-371, the same doctrine was laid down and the above excerpt quoted with approval.

State of Missouri vs. Dockery, 191 U. S., 165, was a writ of error to the Supreme Court of Missouri brought to review a judgment of that court, which judgment affirmed the judgment of the State Circuit Court quashing an alternative writ of mandamus directed to the State Board of Equalization. The petition there alleged that the board, instead of assessing the total actual cash value of taxable property of certain railroad, bridge, telephone, telegraph and express companies, made pretended, fraudulent, inadequate and not uniform assessments upon such property, at valuations varying from about a quarter to forty-eight per cent. of the actual value, except that of the express companies, which they did not assess at all.

It will be observed that the action of the State Board of Equalization of the State of Missouri, in fraudulently undervaluing the property of a large number of companies and corporations, and in omitting altogether to assess others, destroyed all equality and uniformity in the taxing system of the State, and compelled the plaintiff in error to pay an unjust burden of

taxation, and a much greater amount than he would have been compelled to pay had the board performed its duty.

This court, after pointing out that the case of the plaintiff in error did not raise a Federal question under the Fourteenth Amendment, said (page 171):

"Furthermore, if the State could grant a total exemption it could grant a partial exemption, and if it had done so, *de facto*, through its officers, the petitioner can not come here on an allegation that the officers acted as they did without the authority of the State. That, again, is for the State Court to decide. The petitioner has no case under the Constitution of the United States, and nothing else is open. This is a writ of error to a State Court, so that questions under the State Constitution and laws can not be considered, as they might be on error to a subordinate court of the United States."

In view of the doctrine announced and the principle stated in the above authorities quoted it is obviously plain that if it is true that appellant's property or franchise is assessed at its full value and other forms of taxable property in the State is assessed at only 60% of its value, as charged by appellant in its bill of complaint, appellant has no cause of action against the appellees arising under the provisions of the Fourteenth Amendment to the Federal Constitution.

Inasmuch as the District Court acquired jurisdiction of the parties to this action by reason of diversity of citizenship, that court was charged with the duty of determining all questions presented in the case. Appellants also charge the board infringed the rights guaranteed to it under the Constitution and the laws of the State of Kentucky by assessing its property at full value when other forms of taxable property in the State was assessed at only 60% of its real value. This allegation

of appellant's bill presents a question that will be decided here according to the decisions of the State Courts.

When a right is asserted or grant of immunity is claimed under some provision of the Constitution or statutes of a State, in a Federal Court, that court will in adjudicating the right of the parties under that claim construe the Constitution and statutes of the State, as they have been interpreted by the highest judicial tribunal of the State. The interpretation given a statute of the State by the highest court of the State becomes a part of and is written in the statutes.

"THE FEDERAL COURT WILL FOLLOW THE DECISION OF THE STATE COURT WHEN CALLED UPON TO INTERPRET AND CONSTRUE THE CONSTITUTION AND STATUTES OF THE SEVERAL STATES OF THESE UNITED STATES."

This court decided in the case of Leffingwell vs. Warren, 67 U. S., 599-606, 17 L. Ed., 261, that:

"The construction given to the statute of a State by the highest judicial tribunal of such State is regarded as a part of the statute, and is as binding upon the courts of the United States as the text. Shelby vs. Wheat, 351; McCluny vs. Silliman, 3 Pet., 270; Green vs. Neal, 6 Pet., 271; Ross vs. Duval, 13 Pet., 45; Massingill vs. Downs, 7 How., 767; Nesmith vs. Sheldon, 7 How., 812; Van Rensselar vs. Kearney, 11 How., 297; Webster vs. Cooper, 14 How., 504.

"If the highest judicial tribunal of a State adopt new views as to the proper construction of such a statute and reverse its former decisions, this court will follow the latest settled adjudications. United States vs. Morrison, 4 Pet., 124; Green vs. Neal, 6 Pet., 291."

In the case of Gillman vs. Sheboygan, 67 U. S., 510, 17 L. Ed., 305, this court at the same term affirmed the doctrine announced in the Leffingwell case.

The court says:

"We forbear to examine the soundness of the conclusions of the Supreme Court of Wisconsin. They need no support at our hands. We could add nothing to what they have so well said in vindication of their own views. Such a decision would incumber this opinion without throwing any new light upon the subject.

"Acting upon a principle recognized in its administration from the earliest period of its history, this court considered itself bound in cases like this, to follow the settled adjudications of the highest State Court, giving construction to the Constitution and laws of the State. Leffingwell vs. Warren, decided at this term (ante., 255.)"

In Sanford vs. Poe, 69 Fed. Rep., 554, Judge Lurton said:

"Accepting as we feel constrained to do the opinion of the Ohio Court as to the construction to be placed upon the provisions of the Ohio Constitution concerning uniformity of taxation and admissible methods for assessing the property of corporations and accepting also the construction of the Nichols law as settling the meaning of the legislature, we are unable to see wherein any provision of the U. S. Constitution has been infringed."

In the case of Adams Express Company vs. Ohio State Auditor, reported in 165 U. S., page 219, 41 L. Ed., 694; this court speaking through Justice Fuller said:

"The contention that the act in question is invalid because repugnant to the Constitution of the State of Ohio has been disposed of by the decision of the highest tribunal of that State, sustaining its validity. State vs. Jones, 51 Ohio St., 492. These cases fall within no recognized exception to the general rule that the con-

struction by the State Courts of last resort of State Constitutions and statutes will ordinarily be accepted by this court as controlling."

In Ill. State Railroad Tax Case, 92 U. S., 575 (23 L. Ed., 663), the court said:

"But if for no other reason we would reverse the decrees of the circuit court in these cases, because the same questions, involving the same consideration urged upon us here, have been decided by the Supreme Court of the State of Illinois in a manner which leads to the reversal of these. The cases referred to are Porter vs. R. R. Co., 76 Ill., 561, decided at the January term, 1874, and the subsequent case of the R. R. Co. vs. J. J. Cole, 75 Ill., 591, decided in June, 1875. In these two cases all the points arising in the present cases were presented to the court, and decided adversely to the railroad companies. These questions all grew out of the validity and the construction of the tax laws involved in the present cases, and out of the same action of the Board of Equalization. The validity of the statute is not seriously questioned here on the grounds of any conflict with the Constitution of the United States. If any such claim be set up, it is sufficient to say it is without foundation. As the whole matter, then, concerns the validity of the State law as affected by the Constitution of the State, that question, and the other one of the true construction of that statute, belong to the class of questions in regard to which this court still holds, with some few exceptions, that the decisions of the State Courts are to be accepted as the rule of decision for the Federal Courts."

In the case of Pelton, Treasurer, et al. vs. Commercial National Bank of Cleveland, Ohio, reported in 101 U. S., 143; 25 L. Ed., 901, the court said:

"It is an appropriate duty, which this court is called upon to perform very often, to protect rights founded on the Constitution, laws and treaties of the

United States, when those rights are invaded by State authority. But it is a very different thing for this court to declare than an act of a State Legislature, passed with the usual forms necessary to its validity, is void because that legislature has violated the Constitution of the State.

"It has long been recognized in this court that the highest court of the State is the one to which such a question properly belongs; and though the courts of the United States, when exercising a concurrent jurisdiction, must decide it for themselves, if it has not previously been considered by the State Court, it would be indelicate to make such a decision in advance of the State Courts, unless the case imperatively demanded it. We will, therefore, inquire first whether the decree of the circuit court can be sustained on the other ground."

In the case of Merchants' and Manufacturers' National Bank of Pittsburg vs. Commonwealth of Pennsylvania, 167 U. S., 462-464, 42 L. Ed., page 237, Mr. Justice Brewer said:

"The validity of this statute is challenegd by plaintiff in error on these grounds: The first is that its operation resulted in a lack of uniformity of taxation upon the same class of subjects, to-wit, shares of national banks within the State; and the argument of counsel is that it conflicts with Pa. Const., Art. 9, Sect. 1, which requires that 'all taxes shall be uniform upon the same class of subjects within the territorial limits of the authority levying the tax.'

"It is sufficient to say in reference to this contention that the decision of the Supreme Court of the State of Pennsylvania sustaining the statute is conclusive in this court, as to any question of conflict between it and the State Constitution. West River Bridge Co. vs. Dix, 47 U. S., 6 How. 507 (12:535); Bucher vs. Cheshire R. Co., 125 U. S., 555 (31:795); Bells Gap Ry. Co. vs Pennsylvania, 134 U. S., 232 (33:892); Lewis vs. Monson, 151 U. S., 545 (38:265); Adams Ex. Co. vs. Ohio

State Auditor, 165 U. S., 194 (44:683); Long Island Water Supply Co. vs. Brooklyn, 166 U. S., 685 (41:1165.)"

THE DECISIONS OF THE COURT OF APPEALS OF KENTUCKY IN RESPECT TO INEQUALITY IN THE ASSESSMENTS ON DIFFERENT CLASSES OF PROPERTY IN THE STATE FOR TAXATION.

The Court of Appeals of Kentucky has decided an assessment made against the franchise of a corporation in the State at full value as the law directs it shall be, by the Board of Valuation and Assessment is not invalid or illegal, though it appears that other forms of taxable property in the State is assessed at less than its true value.

Soon after the adoption of the present Constitution and the enactment of the statute under consideration the question in this case in respect to inequality of assessments was presented to the Court of Appeals of Kentucky for decision. That court decided that if the franchise of a corporation was assessed at its full value, as the State had a right to so assess it, the assessment of other forms of property in the State at less than its full value, did not invalidate the assessment of the franchise and a court of equity in the State would not enjoin the payment of taxes levied on the franchises on that ground, if the assessment was proper in all other respects.

The question was presented to that court in the case of Louisville Railway Company vs. Commonwealth of Kentucky, reported in 105 Kentucky, page 710.

In that action the Commonwealth of Kentucky sought to recover taxes due upon the assessment of the railway Company's franchise made by the Board of Valuation and Assessment of Kentucky for the year

1896. The company refused to pay the tax levied and assessed against it. One of the defenses interposed by the company was, that as the county assessors and railroad Commission had for that year assessed other property in the State at less than its fair cash value, and the action of the Board of Valuation and Assessment in fixing the value of its property for taxation was prejudicial to the rights of plaintiff because in making the assessment on plaintiff's franchise, the board fixed it at a sum which it considered as the fair cash value thereof. In passing upon this question, the court speaking through Justice Paynter said:

"The contention of counsel for appellant is to the effect that, if other officers of the State disregard the constitutional provision and the statutes requiring them to assess property at its fair cash value, the courts should adjudge that the action of the Board of Valuation and Assessment in assessing franchises at their fair cash value, estimated at the price they would bring at a fair voluntary sale, should be set aside. It is certainly an unusual demand that the action of officers should be disregarded, although they may have acted in strict conformity to the law imposing the duty. The officers take an oath that they will faithfully discharge their duties, and, if they have due respect for their oaths, they are bound to follow the requirements of the organic and statutory law of the State. There never can be exact equality and uniformity in taxation. The purpose of the constitutional provision in question was to require all property to be assessed at its fair cash value. There is no way to execute that provision of the Constitution, except officers be selected by the people for the purpose of assessing the property, that revenue may be raised to carry on the government. It does not seem to be logical, or sound in principle, to say that because one officer, or a class of officers disregard the law, the action of those who strictly follow it, for that reason, should be annulled. If that be a proper view, then the constitutional provision and the statutes become

a dead letter, and the courts will be continually called upon to disregard the legal actions of legally constituted officers because other officers in the State have acted illegally. The court is called upon to constitute itself an instrument, not to uphold the Constitution, but to make complete the utter disregard of its provisions, by not sustaining a proper and legal action of the officers of the State in performance of their duties. If the officers of the State are not properly assessing the real and personal property of the several counties of the State, and if the Railroad Commissioners of the State are not faithful in the discharge of their duties in assessing the railroad property of the State, then there must be a change of the personnel in the various officers of the State so as to bring about a condition, in so far as possible, that equality of assessment and taxation can be had. A speedier way would be to enforce the penal and criminal statutes of the State, if they are being violated. If they are, the prosecution of an officer would suffice to correct the evil complained of. It may be said that this will take time, and cause some of the tax payers of the State to bear an unequal proportion of the burdens of taxation. It is far better that this should be done for a short time, rather than for the courts to adjudge illegal that which the organic law of the State declares is legal. We can not give our consent to declare void proceedings because such proceedings conform to the law."

That court reaffirmed this doctrine in the case of Paducah Street Railway Company vs. County of McCracken, reported in 105 Kentucky, 472, saying:

"It is not a valid objection to the assessment of appellant's franchises that the assessor, in violation of his official duty, listed other property at two-thirds of its value."

The rule announced in these cases by the Kentucky Courts is in accordance with the doctrine announced by the highest courts of other States. In the case just re-

viewed the court quoted with approval from the case of the City of Lowell vs. County Commissioners of Middlesex, reported in 152 Massachusetts, 375 (25 N. E., 470). Substantially the same question was involved in the Louisville Street Railway case as was under consideration in the Massachusetts case.

The court said:

"It is a violation of the statutes knowingly to make a valuation of property for the purpose of taxation at less or more than its full and fair cash value. The just proportion intended by the existing statute is attained by assessing the property of different persons at a uniform rate, upon its fair cash valuation. Whatever may be the remedy, if there be any, when it is shown that the assessors have intentionally assessed the property of a part or all of the inhabitants at less than its fair cash value, we are of the opinion that in a petition for the abatement of taxes on the ground of the overvaluation of the property of the petitioner, and the disproportionate taxation arising from such overvaluation, the question is whether the property has been valued at more than its fair cash value, and not whether it has been valued relatively more or less than similar property of other persons."

Again in the case of the Central Railroad Co. vs. State Board of Assessors, 48 New Jersey Law, 7 (51 Am. R., 1), the court in discussing the question which was in all respects the same as that presented in the Louisville Street Railway case, said:

"The establishment of this system was much criticized by counsel; a prominent argument being that it necessarily introduced inequalities in the valuation of property for taxation, and that by force of its operations such valuation was not made, as the Constitution requires, by a uniform rule, but by a multiform rule. And, in support of this contention the attention of the

court was directed to the fact (which has been established not only by testimony, but by the report of the State Board of Assessors itself) that, although it was the universal practice of the assessors of the different tax districts to rate property much below its real value, the State Board had rated this corporate property at its true value. That this discrepancy, arising out of the practical operation of the methods of valuation, existed, was not disputed. But this result, it is manifest, was not the legal or proper result of the plan of assessment thus introduced by the legislature. This plan provided but one measure of valuation (that is, the true value of the taxable property), and that measure was to be applied alike by the local assessors and the State Board; so that, if both sets of officers had performed their duty, they would have obtained that unity of rule that the Constitution demands. The local officers disobeyed the injunction of the law; and the contention is that the State officers should have pursued the same forbidden course, and that their acts should now be declared to be abortive, because they refused to perpetrate such a malfeasance. Such an argument, in our estimation, has no force whatever, and, indeed, it seems a novel suggestion that a court should annul a proceeding because such proceeding conforms to the law."

In the case of Evansville, Henderson & Nashville Railroad Company vs. Commonwealth, 72 Kentucky, 438, the Court of Appeals said:

"Again the constitutionality of the tax is questioned on the ground of inequality because it appears that other railroads in the State, particularly the Louisville and Nashville and the Louisville, Cincinnati and Lexington Railroads, are of greater value per mile than the road of appellant. But waiving other reasons for rejecting this argument, which might be sustained on the authority of numerous decisions, we deem it sufficient to say that while the evidence shows the other railroads mentioned and their property to be worth more than twenty thousand dollars per mile, and, there-

fore, discloses a reason for increasing the assessment of those roads, it wholly failed to prove that the appellant's road is not of the value of twenty thousand dollars per mile."

In the case of the Commonwealth vs. New York P. & O. R. Co., 188 Pa., 169, the court said:

"The actual value being a pure question of fact, appellant has no standing to complain of discrimination in methods so long as its stock is not assessed in excess of that value. It may be that the Reading and some other corporations are taxed on less than the actual value of their capital stock; if so the Commonwealth is not here appealing and consequently it is not our business to inquire into the matter."

In the case of Ward vs. Gentry County Board, 135 Mo., 309, the court held that the contention on the part of the owners of bank stock that it was assessed at one and one-half times as much as real estate was not sufficient to justify a court to set aside the assessment.

The holding of the Court of Appeals of Kentucky that an assessment made at full value on one class of property will not be disturbed because another class of property in the State is assessed at less than its full value was sanctioned and confirmed by this court in the case of the I. C. Railroad Co. vs. Kentucky, reported in 218 U. S., 557, 54 L. Ed., 1147, when this court said:

"It is also contended that plaintiff in error has been denied the equal protection of the laws upon the ground that other railroad corporations have not been assessed upon the same basis or by the same method, or have not been held to the payment of taxes upon such an assessment. This defense was not pleaded in the answer of the Illinois Central Company, and, in any event, the meager testimony introduced at the hearing is utterly insufficient to afford a basis for the argument. It does not satisfactorily appear that other rail-

road corporations were not assessed in the same way and at the same time, or, assuming that they were so assessed, that they are not liable to pay taxes accordingly. The Court of Appeals of the Commonwealth, in denying the petition for rehearing, said: 'As shown by the opinions of this court, cited in the opinion herein, taxes have been imposed, based on the assessments in controversy. All other tax payers than railroads were taxed, and if some railroads escaped, it is no reason that others should go free while all tax payers of other classes paid their taxes. If any railroads escaped, they are still liable for their taxes unless barred by limitation.' ''

This court again approved the ruling of the Court of Appeals of Kentucky in the case of the Florida Railroad Co. vs. Reynolds, *supra*. In that case one of the defenses interposed to the collection of taxes was that the statutes of the State had failed to provide for the assessment and taxation of all forms of omitted property in the State. That only railroad property was so taxed under the statute. The court addressing itself to this question, said:

"If taxes are to be regarded as mere debts, then the effort of the State to collect from one debtor is not prejudiced by its failure to make like effort to collect from another. And if regarded in the truer light as a contribution to the support of the government, then it does not lie in the mouth of one called upon to make its contribution to complain that some other person has not been coerced into a like contribution."

The Court of Appeals of Kentucky reiterated and reaffirmed the doctrine announced in the Louisville Railway Co. case, *supra*, in the recent case of Ray vs. Armstrong, 140 Ky., page 800.

Residents and tax payers of Jefferson County, Kentucky, and other tax payers in the county conceived themselves aggrieved by the action of the State Board

of Equalization of the State in raising the assessment on all real and personal property in Jefferson County, and instituted an action in the State Courts to annul the assessment as equalized. Complainants allege among other reasons for invalidating the assessment fixed by the State Board, that a higher standard of valuation was fixed on the property located in Jefferson County than was applied in other counties of the State, which action invalidated the assessment made on the property in Jefferson County. In discussing this alleged lack of uniformity of assessments between the counties of the State, the court said:

"An act was passed in 1890 requiring the State Board of Equalization to equalize all property on a basis of 70 per cent. of its actual or cash value. This court held in Louisville Ry. Co. vs. Commonwealth, 105 Ky., 710, 49 S. W., 486, 20 Ky. Law Rep., 1509, that the new Constitution repealed that act. Then it was that the present statute was passed, in which it was provided that the basis of equalization should be the fair cash value of the property assessed, not the averaged assessed value, nor any other per cent. of the cash value."

And again the court said:

"It is true that it is alleged that the increase in value as made by the board operates to raise the assessment in Jefferson County some $12,000,000. Yet it is not alleged that, when so increased, the fair cash value of such property is not as much as the valuation put on it by the board. This feature was adverted to in C., N. O. & T. P. Ry. Co. vs. Commonwealth, 81 Ky., 504, in this language: 'While these companies may not have the right to appear before the county board of each county, they have had the value of their property fixed by the Railroad Commissioners, and are not even complaining now that the valuation is too high.' In Louisville Ry. Co. vs. Commonwealth, 105 Kentucky, 710, 49

S. W., 486, 20 Ky. L. Rep., 1509, the contention of the appellant was that because the statutes then in existence respecting the equalization of assessments by the State Board of Equalization required the board to take 70% of the cash values of the property assessed as the basis of equalization, and as the Board of Valuation and Assessment (an entirely different body) was required to and did assess appellant's property at its fair cash value, it worked a discrimination against that appellant, and denied to it the equal protection of the law. That was a much stronger case on the alleged facts than is this one. Yet this court had no hesitation in declaring that the complaint was not well founded. We then said that it could not justify the assessing board which assessed appellants' property to disregard the Constitution because other assessing officers violated it, that no one would be heard to complain so long as his own property or all the property of the class to which his belonged, was in fact assessed at no more than its fair cash value."

The principles announced in the foregoing decisions of the Court of Appeals of the State make it as plain as language can state, that the standard of assessment on property in Kentucky as fixed by the Constitution and laws of the State is the fair cash value thereof. That the law of the State forbids the assessment of property therein on any other basis. If the assessments on different property in the State can be equalized by judicial proceedings it must be equalized on the basis of fair cash value and not on the average of assessed values, if that average is below the standard fixed by the Constitution and statutes of the State.

The present Constitution of the State provides the legislature may provide a different mode and different valuation for assessing railroad property from that provided for assessing other property.

Section 182 of the present Constitution reads as follows:

"*Railroads—Assessment of.*—Nothing in this Constitution shall be construed to prevent the General Assembly from providing by law, how railroads and railroad property shall be assessed and how taxes thereon shall be collected. And until otherwise provided, the present law on said subject shall remain in force. (See Sec. 4096, Ky. Stat.)"

The Court of Appeals of Kentucky interpreted this section of the Constitution to mean that the legislature may provide by law that railroads and railroad property may be assessed at a different rate and in a different manner from other property in the State.

In the case of Commonwealth of Kentucky vs. E. H. Taylor, reported in 101 Ky., 325, the court says:

"To sustain their contention that this statute is invalid and in conflict with the organic law, four provisions of the Constitution are suggested and discussed by appellant's counsel:

"1st. It is claimed that the mode of assessment provided in Article 5, Chapter 108 on revenue and taxation, violates Section 3 of the bill of rights, which declares that 'no grant of exclusive separate public emoluments or privileges shall be made to any man or set of men, except in consideration of public services.'

"2nd. That it conflicts with Section 174 of the Constitution, which provides that 'all property, whether owned by natural persons or corporations, shall be taxed in proportion to its value, unless exempted by the Constitution.'

"3rd. That it violates Section 171 of the Constitution, which provides that 'taxes shall be uniform on all property in the territorial limits of the authority levying the tax.'

"4th. That it is a local, or special act, regulating the assessment of taxes, and conflicts with Section 59 of the Constitution.

"And in support of these propositions a number of authorities in Kentucky and other States are cited.

* * * It is argued that by Section 174 it was provided that nothing in the Constitution should be construed to prevent the General Assembly from providing by taxation, based on franchises, incomes and licenses, and by another section the Constitution provides that they should not be prevented from providing how railroads should be assessed; and it is claimed that as there is no such provisions as to whiskey in bond it is inferable that the legislation as to the taxation of that property, no matter by whom owned or where stored, must be regarded as subject to the inhibitions of the Constitution—that *suggestio unius est exclusio alterior —but we think that the exception named in the Constitution as to railroads was not merely with the view of providing a different assessor for the railroad property, but that it was intended to provide a different mode of assessment and valuation.* Nor does the clause relating to incomes, franchises and railroads, by necessary implication, prohibit the classification of the objects of taxation, but puts the burden of supporting the government upon all the same class equally (Desty on Taxation, 179 and 470), and Cooley on Constitutional Limitations, page 165, says: 'Implied restrictions resting in theory must be left to the judgment of the law makers chosen by the people.'

"The legislature thought that this peculiar property should be listed for taxation, not by county assessors, but by the State Board of Valuation and Assessment; and being governed in so acting by the *ad valorem* principle, and in conformity with all other property similarly circumstanced, this is all that can be obtained. Perfect uniformity and equality can not be obtained, and when all persons in similar circumstances are treated alike, then equality and uniformity are obtained in the sense meant in the Constitution." (Italics ours.)

The question of the right of the State to assess and tax railroad property in a different manner and at a different ~~rate~~ than that adopted for assessing and taxing other species of property in the State under Section 172 of the Constitution was decided by the court in

the recent case of Commonwealth of Kentucky vs. Southern Pacific Co., reported in 149 S. W., page 1106, 150 Ky., page 97.

It was contended on behalf of the company that the amendment to the revenue law of 1906 providing the method of valuing the franchise of the Southern Pacific Company was repugnant to Subsection 15 of Section 59 of the present Constitution, which prohibits the enactment of any special legislation regulating the levy, assessment or collection of taxes.

In addressing itself to this question the court says:

"The only substantial change in the amendment affected not the method of assessment, but the valuation; and that only to the extent of declaring that as to companies having only foreign lines, the franchise valuation should not be less than one per centum of its capital stock. But notwithstanding this similarity in the express terms of the amending statute and the judicial construction of the section before the amendment, it is yet argued that the amendment contravenes certain sections of our State Constitution.

"(3) As opening the discussion, attention is invited to Section 182 of the Constitution which provides: 'Nothing in this Constitution shall be construed to prevent the General Assembly from providing by law how railroads and railroad property shall be assessed and how taxes thereon shall be collected.' *The right of classification, therefore, is open to the General Assembly in so far as it is exercised in formulating a method of taxation and assessment of railroad property different from that which it may apply to other species of property. Thus is answered at once the constitutional objection that the statute in question conflicts with the prohibition in Subsection* 15 *of Section* 59 *of the Constitution against the enactment of special legislation regulating the levy, assessment, or collection of taxes.*" (Italics ours.)

On page 1110, the court says:

"The general question of the constitutionality of the entire method of assessment of property under the statutes under discussion has been settled in Paducah Street Ry. Co. vs. County of McCracken, et al., 105 Ky., 472, 49 S. W., 178; 20 Ky. Law Rep., 1294; Southern Ry. Co. vs. Coulter, Auditor, 113 Ky., 657, 68 S. W. 873, 24 Ky. Law Rep., 203, and other cases. The amendment of 1906 is, as we have indicated, in line with and not a departure from the method existing when those cases were written."

From a review of the decisions of the Court of Appeals of the State, there can be no question but that the law of this State has been declared by its highest court to be, that an assessment against the franchise of a railroad corporation at full value is not illegal or invalid to any extent because other property in the State is assessed at less than its full value. If this is the law of the State then so much of appellant's case as depends upon its allegation that the assessment against its property is in violation of the Constitution and laws of the State because of the alleged discrimination and lack of uniformity in the assessments on the various classes of property in the State, must fail. The question then arises, was the franchise or property of appellant assessed by the board for taxation for those years at more than its fair cash value, the standard of valuation prescribed by the statute, as charged in its bill?

WHAT WAS THE FAIR CASH VALUE OF APPELLANT'S PROPERTY IN KENTUCKY FOR THE YEARS OF 1912 AND 1913?

The question the board had before it for determination when the assessments were made against property of appellant was, what was the fair cash value of appel-

lant's property in the State of Kentucky for the years of 1912 and 1913? If the evidence then before it sustains its conclusion as to the v[illegible] appellant's property, its judgment should not be [illegible]is court.

The board in arriving at its decision [illegible] this question was bound to be governed by the evidence then before it. In determining whether the assessment is invalid because the assessment was exorbitant and excessively high as appellants allege it was, the courts, in reviewing the case, will be guided by the evidence before the board at the time and when the assessment was made.

The decision of the Assessor as to the valuation put upon property will be presumed to be correct until the contrary appears and the complainant must assume the burden of proving it was assessed too high by satisfactory evidence. A review of the evidence upon which the board acted when it made the assessment, and also the evidence introduced on the trial of these cases in the District Court as to the value of appellant's property in Kentucky, will be helpful in determining whether appellant's property has been over-valued for taxation by the defendants. The appellants' case before the board was prosecuted in conformity to the statute.

The statutes of Kentucky governing franchise assessments provide the board whose duty it is to make the assessment shall make a preliminary or tentative assessment on the franchise of the various corporations in the State subject to a franchise tax. This preliminary or tentative assessment is based upon the report the statute requires the corporation to make to the Auditor of Public Accounts as of June 30th of the year preceding the one for which the tax is levied. The reporting corporations must furnish certain information called for by said report. The Auditor is required to lay these reports before the board when its members assemble to per-

form the duties of the board. When the board has made its preliminary or tentative assessment on the franchise of a corporation, it must notify the corporation or its chief officer of the assessment made. The corporation then has thirty days in which to appear before the board and may introduce any evidence it may have as to the value of its property. The board likewise has the right to consider any evidence it may have, or that may come to its notice, as to the value of the property of the corporation under consideration. After hearing on the preliminary assessment, the board may increase or decrease the tentative assessment if in its opinion the evidence warrants a change in the valuation first fixed. (See Kentucky Statutes, Carroll's Edition, 4077 to 4089, Appendix pages XI. to XV.)

On May 10, 1912, the board made a preliminary or tentative assessment against the franchise of appellant for the year 1912. Within the thirty days allowed by law, the appellant through its representatives appeared before the board in person and filed a protest or objection to the assessment as made. The filing of the protest suspended the assessment until a final hearing by the board. A final assessment was made on the franchise of appellant for the year of 1912 on August 31st, of that year. Between the date of the preliminary assessment and the date of the final assessment, the appellant, through its attorneys, appeared before the board on several occasions and introduced evidence, made statements, filed exhibits, and its case was argued by counsel.

Whereupon the board took the case as made before it under consideration, made its findings and expressed its judgment by the adoption of the following resolution:

(See Transcript 642 and 643, page 47.)

"It is resolved by the Board of Valuation and Assessment of Kentucky, after having given full and due consideration to the returns to the Auditor made by the Illinois Central Railroad Company, a corporation, and having taken into consideration the gross and net earnings of said company in Kentucky and elsewhere, and having considered the proportion the length of the lines owned, operated, leased or controlled, by said company in Kentucky, bears to the total length of the lines owned, operated, leased or controlled in this State and elsewhere; and, having considered the value of its shares and the market value thereof, and the amount of its bonded debt; and, having heard and considered all before the board, including the evidence of the witnesses introduced by the company and the exhibits filed therewith; and, after having heard and considered the arguments of counsel for the company, and after said board ascertained the value of the capital stock of said company in Kentucky and from the amount thus found did deduct the assessed value of all tangible property assessed in the State of Kentucky, it is the judgment of said board, all the members thereof concurring therein, that the taxable value of the franchise of said company, exercised in Kentucky, as so determined, is $14,746,857.00, and the board does hereby ascertain and fix the value thereof at said sum or amount for the purpose of taxation and assessment in Kentucky for the year of 1912.—August 31, 1912.

"The foregoing resolution was offered by H. M. Bosworth, was seconded by Thos. S. Rhea. Upon call of the roll of the members on the resolution—Bosworth voted yes; Crecelius voted yes; Rhea voted yes.

"The chairman declared the resolution carried, and ordered that same be recorded.

"Attest:—Chas. J Veiling, Secretary."

Suit was instituted by appellant within thirty days thereafter in the District Court of the United States for the Eastern District of Kentucky to enjoin the tax so levied and assessed against appellant's property. The

same procedure was followed with reference to the 1913 assessment. The motion for preliminary injunction in the 1912 case was pending until September 15, 1913, and the board postponed making a final assessment on appellant's property for 1913 until after the motion in 1912 case was disposed of, that the members of the board might have the advice of the court. After the opinion in 1912 case was rendered, counsel and representatives of appellant appeared before the board and had a hearing or hearings on its 1913 tentative assessment.

The question of the sufficiency of the notice to the corporation, by the board, of its tentative and final assessment was raised by the Louisville and Nashville Railroad Co. in its action against the board, which is a companion suit to appellant's. The appellant did not raise the question in its suit. It was claimed by the L. & N. R. R. Co. that the board was required under the law to set forth its findings of fact in tentative and final notices of its assessment, and the District Court so held. The board in the year of 1913 and thereafter in obedience to the holding of the District Court, when it made its assessments, set forth its findings of fact and conclusion of law more fully than it did in 1912 and with greater particularity than had been the custom of all of its predecessors in office, and in more detailed form than it did in 1912.

Its final assessment was made on appellant's franchise for 1913 on the 3rd of January, 1914, and was expressed in the following resolution. (See Transcripts 644 and 645, bottom of page 27.)

"The Board of Valuation and Assessment met on the — day of November, 1913, in the State Capitol for the purpose of considering the protest filed by the Illinois

Central Railroad Company, and for the purpose of hearing this company's complaint against the tentative assessment of its franchise for taxation for the year 1913, and there were present as members of said board, H. M. Bosworth, Auditor of Public Accounts; Thomas S. Rhea, Treasurer, and C. F. Crecelius, Secretary of State, and the following proceedings were had:

"On motion it was ordered that James Garnett, Attorney General, be requested to attend said board at its meetings and advise with it in its proceedings. Thereupon came Mr. E. F. Trabue and Mr. Wm. L. Tarbet, attorneys for the Illinois Central Railroad Company, and presented their complaint and objections to the tentative assessments of said corporation. No stenographic notes of the evidence were taken and the evidence given on this hearing was not reduced to writing. All exhibits filed by the representatives of said company and written statements made by them are filed herewith and made part hereof. The hearings were continued from time to time until completed, and the Board then continued said meetings from day to day until the 3rd day of January, 1914, when it made and adopted the following findings:

"In ascertaining the value of the corporate franchise of a railroad company operating lines of railway in Kentucky and elsewhere, the Board of Valuation and Assessment conceived it to be its duty to first ascertain the fair cash value of the capital stock of all the assets of the corporation under consideration, and then to ascertain the proportion thereof which the mileage of said company in this State bears to the mileage within and without the State, which proportion the board should consider in fixing the value of the corporate franchise, and from the value of that proportion of the capital stock in Kentucky should be deducted the assessed value of all tangible property assessed in this State or counties where situated. The remainder thus found will be the value of the corporate franchise.

"The board is of the opinion and believes the fair cash value of the capital stock of a railroad company can be more accurately ascertained in most instances by capitalizing the net income of the corporation. However, it appears from the evidence before the board the net in-

come of respondent for the year ending June 30, 1912, was much less than it was in the next previous years and this extreme decrease in its revenues was extraordinary and caused by strikes of its employes during that year and by reason of floods and extreme cold weather during the winter months. Therefore, in ascertaining the value of the capital stock of respondent, the board considered the market value of its outstanding shares and funded debt, its gross and net earnings for three years next previous to June 30, 1912, and all other evidence offered by respondent relative thereto.

"The Evidence Before the Board As to the Value of Capital Stock of Respondent.

"The evidence shows respondent had outstanding on June 30, 1912, the following securities. (See report and exhibits to Auditor.)

I. C. Common Stock	$109,296,000.00
I. C. Debenture Stock	9,989,700.60
Outstanding funded debt	158,893,000.00

"The board considered the report made by respondent to the Auditor as of June 30, 1912, for the purpose of enabling the board to determine the value of its corporate franchise. The gross and net income of respondent, for the year, derived in Kentucky and on its entire system are fully set forth in this report and agree with report to Kentucky Railroad Commission and the Interstate Commerce Commission and report to stockholders as to its gross and net income and mileage.

"The report of respondent to Auditor for years ending June 30, 1909, 1910 and 1911, as to the gross and net earnings of respondent in Kentucky and its entire system for those years were considered. The board finds, from consideration of those reports, the gross and net income of respondent for the year ending June 30, 1912, were much less than for the next previous years. In their report to stockholders for that year, the directors of the company made this statement as to the cause of the decrease in its revenues, gross and net, for that year:

"'The principal reasons for the decrease were a strike of the shopmen which began on September 30, 1911, on all of the different lines of your company and con-

tinued as a disturbing factor for several months; an unusually severe winter which seriously affected the movement by traffic on the northern lines; and the floods in the spring on the southern lines, which not only interrupted traffic but caused a large increase in operating expense.' "

"It is urged on behalf of respondent that this extraordinary decrease in its revenues is the measure of the depreciation of the value of its property.

"A decrease in the revenues of a corporation or person for a single year, because of inability to operate its business on account of labor trouble or other misfortune, or on account of increased expense of operation due to extraordinary climatic or other conditions for a short period of time, does not permanently impair or lessen the value of the property of the corporation or person so affected.

"If the owner of real estate should be unable to rent his property for half a year, or the owner of a farm by reason of unseasonable weather could only plant or raise one-half the usual crop, the real estate or farm would not be diminished in value by one-half.

"The respondent filed, and the board considered, the affidavits of its engineers stating the value of the physical property of respondent used for railroad purposes exclusive of rolling stock was on June 30, 1912, $324,790,000.00. (See affidavit of A. L. Davis, A. S. Baldwin and D. J. Brumley attached to report to Auditor). And also considered the affidavit of superintendent of motive power of respondent showing the value of all the rolling stock of respondent on June 30, 1912, located everywhere was $39,185,545.00. (See affidavit of M. K. Barnum, superintendent of motive power of respondent, attached to report to Auditor.)

"Therefore, it appears from this evidence the real value of the respondent's physical and tangible property, including equipment used in the conduct of its business, of June 30, 1912, was $363,975,545.00.

"The respondent also filed with its report to the Auditor made as of June 30, 1912, the affidavit of its comptroller, Martin P. Blauvelt, which sets forth and states that respondent had, outside of the State of Ken-

tucky, the following stocks, bonds, cash, notes, advances and miscellaneous property not used for railroad purposes on June 30, 1912:

	Cost or Book Value.
Stocks	$ 5,033,167.12
Bonds	47,545,923.01
Cash	2,294,798.40
Notes	442,246.39
Advances	112,147.22
Miscellaneous properties	446,473.61
	$55,874,755.75

"The affiant did not state the stocks, bonds, notes, advances and miscellaneous property of respondent above set forth were worth, or have an actual value of $55,874,-755.75.

"The affiant does not give a list of the stocks, bonds and notes, or describe the miscellaneous properties which respondent holds as investments and which are not used in its business and thus enable the board to investigate and determine their actual value.

"The road and equipment of respondent is worth and has an actual value of $363,975,545.00. (See affidavits of engineers and general superintendent of motive power). If the property mentioned in affidavit of Blauvelt which we will designate as non-operative property is worth $55,874,755.75, then the value of the properties of respondent, operative and non-operative property, or the total capital stock of respondent, on June 30, 1912, was $419,850,300.00.

"The respondent filed an exhibit with the board (see third method in exhibit) which shows the total value of the capital stock of respondent, on June 30, 1912, was $274,215,140.00
from which is deducted 55,874,756.00

the assumed value of non-operative property of respondent, thus showing the value of the property, or capital stock of respondent used in its business on June 30 ,1912, was $218,340,384.00

"This exhibit is at variance with and wholly contradictory of the evidence of respondent, engineers and superintendent of motive power, who make oath that the actual value of the physical property of respondent, including equipment used in its business on June 30, 1912, was $363,975,545.00.

"The difference between the estimated value of the total capital stock of respondent used in the business, as shown by the exhibits referred to and the value placed thereon by the engineers of respondent, is $145,635,161.00.

"This conflicting evidence, as to the actual vaue of the capital stock of respondent, submitted for the consideration of this board, tends to confuse the members thereof, rather than to enlighten them as to the real value of its property.

"The evidence before the board does not warrant the belief that the non-operative property of respondent was on June 30, 1912, of the value of $55,874,755.00.

"The board also considered the following calculations, in connection with those submitted by respondent, which are made a part hereof, as though fully set forth, and all other evidence offered in arriving at the value of respondent's corporate franchise in Kentucky.

Valuation.

Stock and Bond Plan.

Shares	$109,296,000.00
Average price	136.00
Value Stock	148,642,560.00
Debenture Stock	9,989,700.00
Bonds	158,893,000.00
Total Capital	317,525,260.00
Value Capital Stock in Kentucky on mileage basis, 12.3	39,055,606.98
Equal 80 per cent	31,244,485.00
Deduct tangible property in Kentucky	12,478,903.00
Franchise in Kentucky	18,765,582.00

Valuation.

"Value of capital stock or respondent used in its business ascertained by finding total value by stock and bond plan and deducting alleged value of non-operative property and apportioning remainder to Kentucky on mileage basis:

Common stock	$109,296,000.00@$136	$148,642,560.00
Debentures	9,989,700.00@par	9,989,700.00
Outstanding funded debt	159,893,000.00@par	158,893,000.00
Value of entire capital stock		$317,525,260.00
Deduct		55,874,755.00
Total		$261,650,505.05
Kentucky's proportion capital stock on mileage basis 12.3 per cent		$32,183,021.00
80 per cent		25,745,400.00
Deduct assessed value of tangible property in Kentucky		12,478,903.00
Value of franchise		13,267,506.00

(See exhibit filed by respondent.)

Valuation.

"Value of capital stock ascertained by capitalizing total earnings for years 1909 to 1911, and deducting alleged value of non-operative property:

1909		$ 17,083,763.00
1910		16,069,778.00
1911		21,135,487.00
	3)	$ 54,279,028.00
Average 3 years	6)	$ 18,093,300.00
Total value capital stock		$ 3,015,550.00
Deduct alleged value of non-operative property		55,874,755.00
Total value of capital stock		$245,665,245.00
Kentucky's proportion 12.3		30,216,825.00
80 per cent.		24,173,460.00
Deduct tangible property in Kentucky		12,478,903.00
Franchise		11,694,557.00

NOTE.—Total earnings of respondent for years 1909 to 1911, as shown by report to Auditor of Kentucky for those years.

Mileage.

"The board finds the respondent owns, operates, leases or controls 4,550.74 miles of railway in Kentucky and elsewhere, 563.79 of which, or 12.3% thereof, is in Kentucky.

Apportionment.

"The board finds the ratio of gross operating revenues of respondent derived in Kentucky, to the gross operating revenues of its entire system for year ending June 30, 1912, was 12.03%.

"That the net operating revenues of respondent derived in Kentucky to the net operating revenues of its entire system for said year was 12.09%. (See report of respondent to Auditor and Kentucky Railroad Commission). In view of the fact, the ratio of gross and net earnings of respondent derived wholly within the State of Kentucky from the operation of its road in Kentucky, for the year ending June 30, 1912, and the next previous fiscal years was equal to the ratio of mileage of respondent in Kentucky, the board is of the opinion and finds that the mileage of respondent in Kentucky is as valuable as the average mileage of the system and an apportionment of the entire capital stock of respondent to Kentucky of the mileage basis for the purpose of ascertaining the value of its franchise is fair and equitable to the State and company.

"In arriving at the basis for estimate of value of the capital stock or property of respondent used in its business, the board has considered the evidence offered by respondent as to the real value of its road and equipment used in its business and the evidence as to the cost of reproduction, the market and real value of its stock and bonds and the gross and net earnings of respondent within and without Kentucky, and all other matters appertaining thereto. The board has considered all the evidence offered by respondent and the exhibits filed in connection therewith, and upon consideration of all the foregoing and after hearing the arguments of counsel for respondent and after having taken time to thoroughly consider all matters brought out on the hearing, it is now

adjudged and determined by the Board of Valuation and Assessment of Kentucky, that the fair cash value of the total capital stock of the Illinois Central Railroad Company used in its business in Kentucky and elsewhere during the year ending June 30, 1912, was $280,000,000.00. That the value of its proportion of the capital stock in Kentucky on the mileage basis, 12.3%, for that period, was $34,400,000.00.

"Therefore, the Board of Valuation and Assessment finds and determines the value of Kentucky's proportion of the entire capital stock of respondent at $43,400,000.00, and to be conservative and out of an abundance of caution to the end that no injustice may be done respondent, in arriving at the value of the corporate franchise of the respondent in this State, the board has considered less than 80% of that which it believes to be the fair cash value of Kentucky's proportion of the entire capital stock of respondent, to-wit, $34,400,000.00, and has made an additional, or arbitrary, deduction from the amount thus found on account of the decrease in earnings of respondent for year ending June 30, 1912. It is now ordered that the value of the capital stock of the Illinois Central Railroad in Kentucky for the year of 1913, be fixed at $23,679,-180.00, which, in the opinion of the board, is less than 80% of its fair cash value, with an additional reduction for reasons set forth, from which sum is deducted the assessed value of its tangible property in Kentucky, or the counties where situated, to-wit: $12,478,903.00, and the remainder, to-wit: $11,200,277.00, is adjudged to be the value of the franchise of the Illinois Central Railroad Company in Kentucky, subject to taxation for the year 1913. The roll being called upon the adoption of the foregoing order the members voted as follows:

"H. M. Bosworth votes yes.
"Thos. S. Rhea votes yes.
"C. F. Crecelius votes yes.

"H. M. Bosworth,
Auditor and Chairman.

"Attest:
By Chas. J. Veling, Sec."

It might be observed that if the evidence before the board at the time it made the assessment justified it in placing the valuation upon the property that it did put thereon, and the evidence introduced on the trial of these cases shows the property was not as valuable as it was found to be by the board, the assessment of the board should stand because its judgment was based upon the evidence in the case made before it when its decision was rendered. However, the appellees do not care to rest their case on technical grounds. They claim the evidence, as to the value of appellant's property, introduced on the trial before the District Court, not only confirms but vindicates the judgment of the board and when considered will convince any reasonable person that the property of appellant in Kentucky has much greater value than was placed thereon by the board.

The total assessment, tangible and intangible or franchise, made against appellant's property for taxation for the year of 1912 was $27,124,240 and for the year 1913 it was fixed at $23,679,180. The reduction in the assessment for the year of 1913 was made because of the casualty and misfortune suffered by appellant during its fiscal year of 1912, which very considerably reduced its revenues for that year and was not made because of any depreciation in the value of its property. (See findings of board for year of 1913, Transcript No. 644 and 645, bottom of page 27.)

The tangible or physical property of a railroad company in Kentucky is assessed by the Railroad Commission, and its franchise by the Board of Valuation and Assessment; but in as much, as the Board of Valuation and Assessment of the State in fixing the value of a railroad company's franchise, first ascertains the value of all of its property in the State and deducts therefrom the assessed value of its tangible property in the State

as fixed by the Railroad Commission, it is obvious the assessment is made at last by that board. If the sum total of the tangible assessment and the intangible or franchise assessment of appellant is not in excess of the value of its entire property, located within the State, then the assessment is valid and it can not be said to be excessively high or exorbitant in amount.

Then the question presented for consideration is: did the evidence before the board justify an assessment of $27,124,240 and of $23,679,180 for the years of 1912 and 1913 respectively against the property of appellant in Kentucky? A brief review thereof will compel an affirmative answer.

EVIDENCE BEFORE THE BOARD AS TO THE VALUE OF APPELLANT'S PROPERTY IN KENTUCKY.

On December 6, 1913, W. L. Tarbet, Land and Tax Commissioner of appellant, in his official capacity, addressed to the Auditor, the chairman of the Board of Valuation and Assessment, the following letter:

"Form 1579.

"Illinois Central Railroad Company

Office of Land & Tax Commissioner.

Kentucky: Franchise Assessments.

"Chicago, December 6, 1913.

"My dear Mr. Bosworth:

"There was so little time Friday to discuss the facts that should be considered when an assessment of millions is being made that I am writing you today and beg that you will give this letter very careful attention.

"We have paid tax on $12,000,000 assessment of tangible, and now the board purposes to make us pay for

1913 on the balance of $25,000,000 that should in all fairness be not over $16,800,000.

"I have submitted to the board carefully prepared and truthful statements that conclusively show that the real value of our 'Capital Stock' in Kentucky is not over $28,000,000 and that it should be equalized as low as 60%, which gives $16,800,000 as the fair and just assessment for 1912 or 1913. Lest you have mislaid those statements I enclose copies.

"Judge Cochran says the court cannot fix the value; it is the duty of the board. A mix up of erroneous findings, complications with other litigants, and a misapprehension by the court as to our representations of our value has resulted in an order from the judge for us to pay a balance on $18,986,968 for 1912. It is too much by over $2,000,000.

"The board can capitalize the extraordinarily big earnings of an exceptionally fortunate year, or of two good years, and call that the value; or it can take the sum of all stocks and bonds no matter what property they represent outside the railroad and call that the value, or adopt any unsound method to find a larger full value, in Kentucky than $28,000,000, but no such procedure is equitable or to the credit of the State.

"As to equalization you can insist that you should equalize at 80% because you assess banks at 80%. The fact is that you do not assess banks at 80% full value. You assess at 80% the capital stock (at par value), surplus and undivided profits, and the capital stock is (page 471 Auditor's Report 1910-1911), 71% of it all, and 80% of its par value, Judge Cochran thinks, is only about 60% of its real value. (Page 44, Judge Cochran at Richmond). But it would not materially alter the general ratio at which all property in the State is assessed if you were to actually assess the banks at 100% of actual full value of the shares of stock. Such an increase in the assessment you would then make on less than 4% of all the taxable property in the State would not raise the average ratio of assessment of all the property in the State enough to amount to anything.

"I think you must know that the average ratio in Kentucky is not over 60%. Everybody else knows it,

and most people who have no ax to grind will admit it is as low as 50%.

"Assuming you want to make a just assessment in our case, both for 1912 and 1913, why should you insist on equalizing at over 60%? We are a large taxpayer—$225,000 per annum in Kentucky. We want to pay what is fair and right, but cannot afford to acquiesce in an excessive assessment. I take it the function of the board is not to extract from us every dollar it possibly can without regard to the rights of the matter, but to weigh all the facts that help to ascertain value of our property and the proper ratio for equalization.

"Our value is not over $28,000,000 and the prevailing ratio is not over 60%. Both facts can be proved to the satisfaction of any intelligent unbiased man who will really take the trouble to study them.

"We have for some years past been paying more than our fair share of the railroad taxes in Kentucky, (see page 6 of 1913 statement), and you all seem bent upon increasing our burden without due regard to the real value of the property. Please digest this letter and the enclosed statements when and where you will not be interrupted, and before you take final action. And this is certainly not too much to ask of one to whom so important a duty is entrusted by the State.

"Yours truly,

"W. L. TARBET,

Land and Tax Commissioner.

T/C

Encls.

"HON. H. M. BOSWORTH, State Auditor, Frankfort, Ky."

(See page 26 of Transcript 644 and 645.)

The said W. L. Tarbet filed as evidence with the board at its 1912 hearing an exhibit showing that appellant's property in Kentucky when estimated on the stock and bond plan had a value of $26,347,898; that the balance sheet of the company showed it had a value of $26,583,024; that it had a value when estimated on the

net earning plan of $26,583,624; that it had a value estimated by the cost of reproduction of $28,563,536.

(See page 65, Transcript 642 and 643.)

Said Exhibit is as follows:

(See Transcript 642 and 643, page 64.)

115 KENTUCKY DATA IN RE 1912 FRANCHISE ASST. IN FEDERAL COURT.

1911 "capital stock" assessment		$16,843,993
Tangible	Paid on	12,333,673
Franchise	Paid on	$4,510,320
1912 "capital stock" assessment		$27,124,240
Tangible	Paid on	12,377,383
Franchise	In Litigation	$19,746,857

TARBET'S BLUE PRINT, PRESENTED TO BD. OF V. & A., MAY 10, 1912.

Average Ky. net for last five years		$1,612,131
Capitalized at 6%		$26,868,850
Stock and Bond value		25,855,154
Present worth by reproduction		25,675,918
Average		$26,133,307
Equalized at	(Our 20 counties only)	56.8%
Kentucky "capital stock" value for asst.		$14,843,718
Deduct tangible		12,377,383
Franchise		$2,466,335

TARBET'S TYPEWRITTEN STATEMENT PRESENTED TO BD. OF V. & A., JUNE 20, 1912.

Ave. system net for last five years	$12,967,329
Capitalized at 6%	$216,122,100
Kentucky mileage prorate	12.35
Kentucky "capital stock" value	$26,691,085
Equalize at (Our 20 counties)	58.4%
Kentucky "capital stock" assessment	$15,587,594
Deduct tangible	12,377,383
Franchise	$3,210,211

NEW PRESENTATION, ALL SYSTEM VALUES PRORATED TO KENTUCKY.

	Ky. Prorate of "Cap. Stk." value.
1. From system net	$26,583,024
2. From reproduction	28,563,536
3. From stock and bonds	26,347,898
4. From balance sheet	26,825,849
Average Ky. "capital stock" value	$27,080,077
Equalize at (State wide ratio)	50%
Ky. "capital stock" assessment	$13,540,038
Deduct tangible	12,377,383
Franchise	$1,162,655

U. S. CENSUS FIGURES—RATIO ASSESSMENT TO VALUE.

Equalization	1900	1904	1910
All Kentucky taxable	50.3%	48.3%	.....
All Kentucky realty	62.8%	62.2%	.....
All Kentucky personalty	34.5%	32.2%	.....
All Kentucky farm property	63.4%	.....	51.6%

REPORT OF STATE BOARD OF EQUALIZATION CORROBORATES THIS SHOWING.

The Equalization Ratio used in the blue print, 56.8%, was the average of 79 admissions by county officials and men of affairs in their twenty respective counties. McCracken County showed 38.5% and Webster County showed only 27.5%. Mr. Rhea protested that those counties were not assessed lower than 50%; so for the sake of argument I substitute 50% for each of those counties notwithstanding the admissions of the men best informed in their own counties, and so raised the average 58.4% in the typewritten statement.—(See Transcript 642 and 643, page 65.)"

On June 20, 1912, Mr. Tarbet filed another exhibit with the board which showed the value of that portion of appellant's property in Kentucky to be $27,080,077. For the convenience of the court this and other exhibits and evidence introduced before the Board will be reproduced in full.—(See Transcript 642 and 643, pages 66 and 67.)

"Illinois Central Railroad Company.

Kentucky Franchise Assessment, 1912, to ascertain value of "Capital Stock" of 564 miles of railroad operated in Kentucky by I. C. R. R. Co., and fairly equalized assessment of same:

First Method.

Net Income from Operation of System 4,551 miles, I. C. R. R.

1907	$12,750,121
1908	12,742,868
1909	12,945,935
1910	12,004,674
1911	14,393,049
Ave.	$64,836,647
Cap. at 6%	$12,967.329
	$216,122,150
	12.3
Ky. mileage prorate	$26,538,024
Equalized at	60%
Ky. capital stock	$15,949,814
Deduct tangible	12,377,383
Franchise	$3,572,431

SECOND METHOD.

Cost to Reproduce the Physical Property of I. C. System, as per Affidavits.

R. R.	$318,129,000
Equipment	38,256,118
Kentucky's mileage prorate	$43,835,369
But, present worth of one average Kentucky mile, as per affidavits, $51,027, and present worth of 4,551 miles at $51,027	$232,223,877
Present worth of system as above	$356,385,118
System value at $51,027 per mile	232,223,877
Excess outside Kentucky	$124,161,241
	12.3
Kentucky's prorate of excess	$15,271,833
Ky. straight mileage prorate	43,835,369
Deduct prorate of excess	15,271,833
Value of "capital stock" in Ky.	$28,563,536
Equalize at	60%
	$17,138,122
Deduct tangible	12,377,383
Franchise assessment	$4,760,739

But, this is estimated cost, not value.

ILLINOIS CENTRAL RAILROAD COMPANY.

	Third Method Par Value.			Market or Appraised.
I. C. common stock	$109,296,000–1911	at	132	$144,370,720
I. C. debenture 4%	9,989,700–	at	5	7,991,760
Funded debt Ave. 3.7 outstanding	157,093,000–	at	5	166,248,820
Total Int. $5,866,540				
				$268,511,300
But this represents all the property of the Corporation, including $154,300,746.49 worth of property that is separate and distinct from the 4,551 miles of R. R. operated as per affidavit of M. P. Blauvelt.				
Deduct this				54,300,746
Remainder representing the 4,551 Mi. R. R.				$214,210,554
				12.3
Ky. Mileage prorate				$26,347,898
Equalize at				60%
				$15,808,739
Deduct tangible				12,377,383
Remainder, franchise				$3,431,356

ILLINOIS CENTRAL RAILROAD COMPANY.

FOURTH METHOD.

Assets footing of balance sheet	$330,139,534
Deduct amount irrelevant to mileage operated, as per affidavit of M. P. Blauvelt	112,043,198
	$218,096,336
Ky. mileage prorate	12.3%
	$26,825,849
Equalize at	60%
	$16,095,509
Deduct tangible	12,377,383
Franchise	$3,718,126

ILLINOIS CENTRAL RAILROAD COMPANY.

COMBINING KENTUCKY'S "CAPITAL STOCK" VALUATIONS.

First method	$26,583,024
Second method	28,563,536
Third method	26,347,898
Fourth method	26,825,849
4)	$108,320,307
Average	$27,080,077
Equalize at	60%
	$16,248,046
Deduct tangible	12,377,383
Or $6,883 per mile	$3,870,663

Form 1579.

ILLINOIS CENTRAL RAILROAD COMPANY.

EQUALIZATION.

In 1912 we secured the sworn statements of men of affairs in twenty Illinois Central Counties in Kentucky stating their opinions as to the ratio of assessment to real value prevailing in their respective counties. These seventy-nine opinions showed an average of 53.9% in said twenty counties.

Advance sheets U. S. Census Report 1910 show the value of all farms and farm property, including improvements, live stock and implements, in Kentucky $773,797,-880. The report of the Kentucky State Board of Equalization shows that this property was assessed at $339,-554,313, or 51.6% of the value, and this property comprised about 43% of the aggregate assessment of all taxable property in the State. The same property showed an assessment in 1900 63.4% of the value. As the 1900 assessment was 63.4% of real value, and the 1910 assessment was but 51.6%, it may be assumed that the present assessment is less than 50% of the value.

Pages 38 to 41 inclusive of Volume on Wealth, Debt and Taxation of Federal Census show that realty was assessed in Kentucky in 1900 at 62.8%, in 1904 at 62.2%; that personalty was assessed in Kentucky in 1900 at 34.5%, in 1904 at 32.2%; that all taxable property was assessed in 1900 at 50.3%, in 1904 at 48.3%.

The foregoing taken in connection with the reports of the State Board of Equalization, lead to the conclusion that Kentucky taxable property is habitually and generally assessed on the average of at approximately 50% of real value.

In connection with the assessment for the year of 1912, the said W. L. Tarbet filed with the Board of Valuation and Assessment Exhibit "D," which is as follows:

(See page 25 of Transcript 644 and 645.)

EXHIBIT D.

KENTUCKY—DATA IN RE 1912 FRANCHISE ASS'T IN FEDERAL COURT.

1911 "Capital Stock" assessment		$16,843,993
Tangible	paid on	12,333,673
Franchise	paid on	$4,510,320
1912 "Capital Stock" assessment		$27,124,240
Tangible	paid on	12,377,383
Franchise	in litigation	$14,746,857

TARBET'S BLUE PRINT, PRESENTED TO BD. OF V. & A., MAY 10, 1912.

Average Kentucky, net for last five years		$1,612,131
Capitalized at 6%		$26,868,850
Stock and bond value		25,855,154
Present worth by reproduction		26,675,918
Average		$26,133,307
Equalize at	(our twenty counties only)	56.8%
Ky. "Cap. Stock" value for assessment		$14,843,718
Deduct tangible		12,377,383
Franchise		$2,466,335

TARBET'S TYPEWRITTEN STATEMENT, PRESENTED TO BD. OF V. & A., JUNE 20, 1912.

Average system net for last 5 years		$12,967,329
Capitalized at 6%		$216,122,100
Kentucky mileage prorate		12.35
Ky. "Capital Stock" value		$26,691,085
Equalize at	(our 20 counties only)	58.4%
Ky. "Capital Stock" assessment		$15,587,594
Deduct tangible		12,377,383
Franchise		$3,210,211

NEW PRESENTATION, ALL SYSTEM VALUES PRORATED TO KENTUCKY.

	Ky. Prorate of "Cap. Stk." Value.
1. From system net	$26,583,024
2. From reproduction	28,563,536
3. From stocks and bonds	26,347,898
4. From balance sheet	26,825,849
Average Ky. "Capital Stock" value	$27,080,077
Equalize at (State wide ratio)	50%
Ky. "Capital Stock" assessment	$16,248,046
Deduct tangible	12,377,383
Franchise	$3,870,663

	U. S. Census figures—ratio Assessment to value.		
Equalization.	1900	1904	1910
All Kentucky taxable	50.3%	48.3%	.....
All Kentucky realty	62.8	62.2	.....
All Kentucky personalty	34.5	32.2	.....
All Kentucky farm property	63.4	.....	51.6%

Reports of State Board of Equalization corroborate this showing.

The equalization ratio used in the blue print, 56.8% was the average of 70 admissions by County Officials and men of affairs in their 20 respective counties. McCracken County showed 38.5% and Webster County showed only 27.5%. Mr. Rhea protested that those counties were not assessed lower than 50%; so for the sake of argument I substituted 50% for each of those counties notwithstanding the admissions of the men best informed in their own counties, and so raised the average 58.4% in the typewritten statement.

The appellant stated in its 1912 bill the facts from which deductions should be drawn as to the value of its property in Kentucky and elsewhere. It alleged:

"That between June 30, 1911, and October 1, 1911, complainant duly made and delivered to defendant Bosworth, Auditor aforesaid, a verified statement or report as prescribed by the Kentucky Statutes, especially section 4078, and succeeding sections correctly and truly setting out the information required by said statutes and made whatever additional statement and gave such additional information as said Board of Valuation and Assessment requested of complainant, so that the said report shows, among other things, the following information in regard to the results of operation of the whole line of the Illinois Central Railroad Company and of the road located in Kentucky.

	I. C. System.	Kentucky.
Operating revenue	$60,977,031.49	$7,622,738.49
Operating expense	43,856,228.13	5,068,952.56
New operating revenue	17,120,803.36	2,553,785.93
Total net revenue	17,064,339.12	2,552,922.14
Taxes	2,671,290.22	225,153.72
Operating income	14,393,048.90	2,327,768.42
Other income	6,742,438.50	85,260.18
Gross corporate income	21,135,487.40	2,413,028.60
Rents accrued for lease of other roads	3,748,071.10	12,039.70
Other rents	531,720.03	278,018.83
Other corporate income	11,315,343.92	1,225,291.79

"As a portion of the said report was shown the general balance sheet of the company as of June 30, 1911, showing a grand total of assets $330,139,534.04, as will more fully appear from Exhibit "A" of this bill, and further showed that the Illinois Central Railroad Company was a corporation of the State of Illinois and was not incorporated in the State of Kentucky. The said report further showed the total mileage, operated, owned and leased or controlled elsewhere than in Kentucky to be 3,986.75 miles:

"Your orator further states that during the year ending June 30, 1911, that the market value of capital stock and funded debt of its system not held in the treasury of the company, such market value being based on the highest quotations on the New York Stock Exchange

during the year ending June 30, 1911, as reported by the Commercial and Financial Chronicle was $306,934,100.

"That the value of physical or tangible property of the entire system, excluding the State of Kentucky, was not less than $320,000,000.

"That the assessed value of the tangible property of the said company in Kentucky was $12,377,383.

"That the net income of the system operated by the said corporation as an operating company amounted to $15,757,767.55.

"That the above net income capitalized at five per cent amounts to $315,155,315, at six per cent. amounts to $262,629,459.00, and at seven per cent. amounts to $225,110,965."

(See Transcript 642 and 643, pages 6 and 7.)

From the foregoing averments, these facts appear as to the relative value of appellant's property within and without Kentucky::

That the entire mileage of appellant's system is	4,550.54
That the mileage of appellant in Kentucky is	563.79
That the ratio of mileage in Kentucky to entire system is	12.3%
That the gross earnings of appellant for year ending June 30, 1911, was	$60,977,031.49
That the gross earnings of appellant for that year on its Kentucky property was	$7,622,738.49
That the ratio of gross earnings of appellant in Kentucky to the gross earnings of system was	12.4%
That the net earnings of appellant for year ending June 30, 1911, was	$2,327,768.42
That the ratio of net earnings of appellant in Kentucky to the net earnings of system was	15.4%

That the value of complainant's physical or tangible property excluding Kentucky was	$320,000,000.00	
That the assessed value of tangible or physical property of appellant in Kentucky was	$12,377,383.00	
(The appellant did not state the real value of its tangible property in Kentucky. In the 1913 case it stated the cost of reproduction of its property in Kentucky was $28,000,000.00 in round numbers.)		
$320,000,000 of appellant's capital invested in property outside Kentucky yielded an income of $13,429,999.00 equivalent to a rate on its investment outside Kentucky of		.042%
$28,000,000.00 of its capital invested in Kentucky yielded an income of $2,327,768.00, equivalent to a rate on its investment on property in Kentucky of		.083%

From these facts it is obvious that appellant's property outside the State is not as valuable as claimed by appellant and that its property in Kentucky has a greater value than appellant assigned to it. Its Kentucky property yields almost twice the return that it receives on its property without the State.

The Department of Commerce and Labor of the Census Bureau of the United States made a commercial valuation of all railroads in the United States as of the date of June 30, 1904.

This work was done under the supervision of men who were considered the best qualified in the country to do that work. The results of their findings were set forth

in Bulletin No. 21, issued in 1905. It was there shown that the ratio of assessed to true value of all railroad property in Kentucky, was 49.9%. The assessed value of appellant's property in Kentucky made as of June 30, 1904, was $15,734,285. If this sum was only 49.9% of its true value, it is obvious the full value of appellant's property on that date was in excess of $31,000,000.00. When the vast increase in the value of appellant's property since that date is taken into consideration, it is uncontrovertably shown that appellant's property in Kentucky is far in excess of $31,000,000.00.

The board at its 1913 hearing had in evidence a copy of a bill filed by appellant in the Circuit Court of the United States District Court for the Eastern District of Kentucky against the Railroad Commission of Kentucky in 1906, wherein it was alleged and shown by appellant that the cost of reproduction of appellant's lines and equipment in Kentucky as of date June 30, 1905, was $28,768,277.77. The averments of that bill in respect to value of appellant's property in Kentucky, are as follows:

"The complainant avers that it is true that the said railroad and equipment used by complainant in the transaction of its purely interstate business in Kentucky are of the reasonable and fair cash value of at least $28,768,277.77."—(See pages 85 and 86 Transcript 642 and 643.)

It is alleged in paragraph seven of appellant's bill in the 1913 case, that appellant through its representatives exemplified and showed to the members of the Board of Valuation and Assessment, the defendants, before their assessments were made that the value of its property in Kentucky when estimated on the net earnings plan was worth $24,568,690.00, and that the reproduction value method showed it to be worth $28,563,537.00.

These allegations of the bill are stated in this language:

"That in the hearings, before the said defendants aforesaid, plaintiff, through its representatives, exemplified to said defendants the usual, and virtually all known methods of computing the valuation of railroad franchises, as well for the year 1912 as the year 1913, being exhibit 'B' and exhibit 'C' of the exhibit 'Y,' certified by said Veiling, whereby and especially by exhibit 'C' it was demonstrated to said board that by the method of valuation known as the earnings method the total capital stock value of plaintiff apportionable to Kentucky could not exceed, without equalization, $24,568,690; that by the method known as the reproduction value method, such total capital stock apportionable to Kentucky could not exceed $28,563,537; that by the stock and bonds method, commonly so-called, the proportion of the total capital stock of plaintiff apportionable to Kentucky could not exceed $26,855,867; that by the consideration of the footings of plaintiff's balance sheet method the proportion of such total capital stock apportionable to Kentucky could not exceed $27,862,595, and that by combining or averaging the results of such methods, being first, second, third and fourth methods, it was shown that the proportion of such capital stock apportionable to Kentucky could not exceed $26,960,172; and on the hearing in this honorable court on the 12th day of November, 1913, in Suit No. 731, styled Illinois Central Railway Company vs. Henry Bosworth and others, for the purpose of fixing a sum to be paid by plaintiff to the Commonwealth as a condition precedent to the issuance of an injunction prayed for in such suit, viz., an injunction to enjoin defendant from enforcing or causing to be enforced, the so-called valuation which they assumed to make against plaintiff for franchise taxes for the year 1912, the defendant, Attorney General, and said John H. Rich, representing the defendants, Bosworth, Rhea and Crecelius, tendered and offered to file in said suit a certified copy of the bill and amended bill filed by plaintiff in this court in Suit No. ..... styled, Illinois Central Railroad Company, Complainant, vs. A. T. Siler, et al., showing by said bill

the value of plaintiff's property in Kentucky to be $28,766,277.77, so that by all of said evidence and exemplifications and pleadings, copies whereof were filed by defendants through their said attorney, it was shown that the maximum amount which could by any legitimate method be fixed as the franchise tax valuation of plaintiff's property in Kentucky, was the same mentioned in plaintiff's amended bill in said Siler case, and said sums, respectively, equalized at 60%, demonstrated that by legitimate and authorized methods of valuation no sums could be fixed as the franchise tax valuation of plaintiff's property exceeding the sums represented by 60% of the sums aforesaid, to-wit: $14,735,214 (less $12,381,773), $2,353,441; $17,138,122 (less $12,381,773), $4,756,349; $16,113,520 (less $12,381,773), $3,731,747; $16,717,557 (less $12,381,773), $4,335,784; $16,176,103 (less $12,381,773), $3,794,330; $15,600,000 (less $12,381,773), $3,218,227 or $17,260,966.36 (less $12,381,773), $4,879,193.66; that in the suit No. 731 aforesaid, this court adjudged that the taxing officers of the State of Kentucky habitually, intentionally, systematically and generally assessed the property of individuals and of private corporations in the State of Kentucky at 60% or less of the fair cash value of said property which it would bring at a fair and voluntary sale, and plaintiff says that said officers have for years last past habitually, intentionally, systematically and generally assessed property of individuals and of private corporations at not exceeding 50% of the fair cash value of said property which it would bring at a fair and voluntary sale thereof."

The foregoing averments in appellant's bill amount to an admission and declaration of the officers and attorneys of appellant that the value of appellant's property in Kentucky in the years 1912 and 1913 was at least $28,000,000 in round numbers. As the assessment thereon for each of those years was fixed at less than that sum, then it is apparent that charges in appellant's bill that the assessments complained of herein were excessively high and exorbitant in amount and were fraudulent because

they were unsupported by evidence, are wholly untrue and were made without any justification.

The report made by appellant to the Auditor for year 1908 to 1910 inclusive, upon which assessments of the company for those years had been based, showed the net earnings of appellant on its property in Kentucky, were:

1908	$1,320,229.91
1909	1,524,923.93
1910	1,827,234.79
1911	2,413,028.60
1912	1,456,351.91

(See pages 145 and 146 of Transcript No. 642 and 643.)

It will be observed that the earnings of appellant in Kentucky for each of those years were increased each year over the next previous with the exception of the year of 1912. The year ending June, 1912, showed a marked falling off in earnings of previous years because of the strikes of its employees and the flood that occurred in the spring of that year. But even in the face of these disasters, the company earned on its property in Kentucky for that year the sum of $1,456,351.

In the fiscal year preceding its earnings in Kentucky were $2,413,028. It is obviously untrue as stated by appellant in this bill that the board in estimating the value of appellant on the net earning plan, used the earnings of the company's most prosperous years. The earnings of the company each year prior to the year of 1912 showed a marked increase over the next previous year. In other words, the company's entire earnings and its earnings in Kentucky since the year of 1904 showed an increase each year. The amount of revenue derived by appellant from the operation of that portion of its road in Kentucky is an evidential fact that is most convincing that its prop-

erty in Kentucky has a far greater value than attributed to it by this board. In order to destroy the force and weight of this testimony, appellant introduced its comptroller to show how its earnings in Kentucky were determined. His testimony was couched in equivocal language, but he did not say the statements of appellant in its reports to the Auditor as to its earnings in Kentucky for the several years mentioned were incorrect. The substance of his evidence was that the prorating of earnings to Kentucky was not exactly correct; that neither the expenses nor earnings are entirely accurate, and it is impossible to get them so, no plan having yet been devised to accomplish it.

(See Transcript 642 and 643, page 197.)

The appellant undertook to show by the witness Blauvelt, that it had $55,559,000 of intangible property not devoted to railroad purposes. When pressed for a description of this property he became evasive and abstruse. He stated $15,000,000 of this sum was in cash, but he refused to state how this cash had been accumulated or to what uses it was put. That the surplus of the company for the year ending June 30, 1911, was $6,783,964.69, and for the year ending June 30, 1912, it was only $2,768,366.51.

(See Transcript Nos. 642 and 643, page 200.)

If these sums represent correctly its accumulated surplus for those years, we submit it was an absolute impossibility for the company to have and own property not used in its business as a carrier of freight and passengers, of the value of $50,559,000. If it had that sum or amount of property not used in its business its surplus earnings would be equal to that amount.

There is a propostion in this connection that is self evident. If it had on hand $50,559,000 not used in its business, it obtained that sum from earnings on its property in the past, which fact would indicate its property has a

very much greater earning capacity than is admitted or it obtained that sum of money by borrowing or the issuance of bonds against its property, which if true would show the property has a very great value else, these bonds could not have been sold. It seems perfectly idle to contend that a company would borrow $50,000,000 to devote to business foreign to the purposes of its creation. That the company must have obtained this $50,559,000 in either of the ways indicated is evident from the testimony of the witness Blauvelt, who said:

(See page 201, Transcript 642 and 643.)

"Q. I believe you said there were only two ways that a railroad company could procure money?

"A. Yes, sir; to earn it or to sell bonds. I am talking about the present when I state that. I was not talking about what had been prior to 1907. You can see from the Illinois Central Company's reports prior to that date, if you will examine them, that practically every year there were millions appropriated from income for the purchase of equipment, and for the purchase of property at different times. Now, that time has all gone; you can't do that. If it is appropriated that way now, it must be shown as a part of what we call 'appropriated surplus.' The Illinois Central spent millions in that way, that are not enumerated in the balance sheet in any way.

"Q. Where did the Illinois Central get these millions that it spent that way?

"A. It got it from earnings.

"Q. After all, then, it goes back to the question of earnings?

"A. Yes, sir."

If the appellant earned millions of dollars prior to 1907, as witness states, which it appropriated for the purchase of equipment and additions to its property, the value of its plant was increased to that extent. If it earned millions of dollars, as witness states, prior to 1907, its earning were proportionately greater subsequent to that

year because the volume of business during 1907 and all succeeding years was much greater than it was in any years prior to 1907. The change in its system of stating its accounts required by the Interstate Commerce Commission did not destroy its earning capacity. That change only prevented it from concealing from the public and taxing authorities its vast earnings. In a chart filed with its annual report to stockholders as of June 30, 1911, appellant shows the gross income of its lines between the years of 1901 and 1911 increased 55%. That during that time the mileage of its system only increased 11.38%. The net income was increased in like proportion.

(See Transcript 642 and 643, page 151.)

The District Court in discussing the testimony of appellant in reference to the value of its non-operative property said:

"Then as to the personal property claimed to be outside of the State and not a part of the plaintiff's unit for apportionment? I put it in my former opinion at $46,836,865.89. It really is $40,649,137.08. The plaintiff claimed a deduction of $55,874,755 on this score before the board and now drops over $15,000,000 therefrom. It made no showing of the real value of this property or gave an itemized list thereof so that the board might make an examination as to the value thereof. Even if the board should have made a deduction on account thereof it cannot be said that it did not give sufficient consideration thereto. And in the showing here we have nothing but the itemized list of the affidavit of Mr. Blauvett that these items were not derived from railroad operations or used for railroad purposes located and having their situs outside of the State. No attempt is made to put the court in position to determine for itself whether it is a part of its unit or any explanation given as to why plaintiff is holding on to this property, how its ownership and possession serves plaintiff, if at all, and why it is not distributed to the stockholders. Nor is any estimate of its value given.

We have nothing but its cost or book value. As to this matter the cases of Coulter vs. Weir, and Fargo vs. Hart, do not apply. In the former case the property in question had been placed in the hands of trustees for benefit of stockholders. In the latter case the facts do not clearly appear as to whether such a separation of the property from the express company had been made. It is likely that it had. All that appeared as to its use to the company was that it gave it credit which was the case in Coulter vs. Weir."—(See Transcript 644 and 645, page 170.)

From this review of the evidence upon which the board formulated its judgment as to the value of appellant's property for the years in question, it must be conceded that the evidence warranted the assessments made against property of appellant which are sought to be impeached in these proceedings.

EVIDENCE ON THE TRIAL IN THE DISTRICT COURT.

On the trial of these cases in the District Court the appellant offered as a witness W. L. Tarbet, its Land and Tax Commissioner, presumably to show that its property in Kentucky was not as valuable as the board had found it to be.

In his evidence there given he flatly contradicted the written statements he had laid before the board at its hearing on the 1912 and 1913 assesments in respect to the value of appellant's property in Kentucky.

He had appeared before the board as a representative of appellant at its hearing in 1912 and 1913, when the board was considering the appellant's assessment for those years. This witness testified at the trial that the full value of appellant's property in Kentucky subject to taxation therein for the years of 1912 and 1913 was $13,489,449.00. That it should be assessed at not more than $8,093,669.00.

That by another method of estimating the value of appellant's property in Kentucky for those years, he found the full value of appellant's property in Kentucky to be $18,434,060.00. That is should be assessed at not more than $11,060,496.00, which was one million dollars less than its tangible assessment.

(See Transcript 642 and 643, page 207.)

He admitted he was the same Tarbet who appeared before the board for the years of 1912 and 1913 and submitted certain calculations for the consideration of the board which showed what he considered to be the fair cash value of appellant's property in Kentucky in more ways than one, and he then did not fix the value of appellant's property at less than $27,000,000.00. That he did not fix the value thereof on the occasions he appeared before the board as low as $13,000,000.00 or $16,000,000.00 or $18,000,000.00.

When testifying before the District Court he sought to stultify the exhibits and estimates of value he had filed with the board, by stating he might have furnished something to the board on the spur of the moment, when he had to file a quick objection to their work.

(See Transcript 642 and 643, page 209.)

This uncandid testimony is a flat contradiction of his previous statements and declarations.

One of the exhibits filed with the board showing the fair cash value of appellant's property in Kentucky to be in excess of $27,000,000.00 was filed by him as early as May 10, 1912. He filed another with the board in June, 1912. Other exhibits were filed in June and August of 1913, by him.

On December 6, 1913, which was long after he had prepared and presented appellant's case to the board, as to its 1912 and 1913 assessment, he addressed an official communication to the chairman of the board in regard

to the 1913 assessment in which he stated with respect to the value of appellant's property in Kentucky that:

"I have submitted to the board carefully prepared and truthful statements that conclusively show that the real value of our 'capital stock' in Kentucky is not over $28,000,000.00, and that it should be equalized as low as 60%, which gives $16,800,000.00 as the fair and just assessment for 1912 and 1913. Lest you have mislaid those statements I enclose copies."—(Transcript 644 and 645, page 26.)

The record of the proceedings before the board in these cases impeaches his evidence that he might have filed something with the board on the spur of the moment when he had to file a quick objection to their work. On May 10, 1912, he filed with the board an exhibit showing the value of its property in Kentucky was $27,000,000. In June of that year he filed another of like import.

During the year of 1913 he confirmed these statements made therein by filing other written statements to the same effect as to the value of appellant's property, and finally on December 6, 1913, after his case before the board had been concluded, he wrote the chairman of the board a confirmation of all he had previously stated as to the value of appellant's property in Kentucky. He therein avows the statement is truthful.

"I have submitted to the board carefully prepared and *truthful* statements that conclusively show the *real value* of our capital stock in Kentucky is not over $28,000,000.00."

If this action extending over a period of a year and a half is quick work what would amount to deliberation?

Appellant also introduced D. J. Bromley, an engineer, who testified that the cost of reproduction of appellant's lines in Kentucky for the fiscal year ending

June 30, 1911, the date on which the 1912 assessment was based, exclusive of rolling stock, was $24,156,803, and for the fiscal year ending June 30, 1912, was $24,456,800 exclusive of the rolling stock of appellant used on its lines in Kentucky. It was also shown in testimony that the value of the rolling stock used by appellant in Kentucky was $4,225,000 or $4,500.000.

(See page 211, Transcript No. 642 and 643.)

That the cost of reproduction of appellant's property in Kentucky per mile exclusive of rolling stock in 1911 was $42,847.00, and in 1912 was $43,676.00. Including rolling stock the cost of reproducing appellant's lines and equipment in Kentucky would cost in excess of $50,000.00 per mile. The assessment of appellant's property in Kentucky for 1912 was a little in excess of $48,000.00 per mile and for 1913 was a little in excess of $40,000 per mile. The witness testified the value of the Kentucky mileage of appellant or cost of reproduction was obtained by excluding the estimated values of all terminals of the company outside the State. That the entire railway system of complainant for the year ending June 30, 1911, had a value of $319,683,045.00, the equivalent of $70,252.00 per mile, and for the fiscal year of June 30, 1912, $324,790,000.00 or $73,394.00 per mile. This is exclusive of rolling stock.

Appellant attempted to show there was a difference in the value of the Kentucky mileage and the mileage of the system; that the property outside the State was more valuable than the property in the State. This conclusion was reached by the witness by apportioning to the Kentucky mileage, the terminal value of appellant's property in Kentucky and to all mileage outside of the State the value of all terminals outside of the State.

The witness Bromley said:

(See page 196 of Transcript No. 642 and 643.)

"A. I made my comparison on the distribution of the Louisville terminal as against Kentucky mileage and the value of the terminals at Chicago, East St. Louis, Memphis and New Orleans, against that of the State of Kentucky.

"Q. I see. Then it was a comparison of that inside with that outside, and not that inside with the system—the whole corporation of the railroad?

"A. It was a comparison of the distribution of the Louisville terminal against each mile of the Kentucky lines with the value of the terminals at Chicago, East St. Louis, Memphis and New Orleans against each mile of the lines outside of the State of Kentucky."

Even by pursuing this unique and wholly indefensible method of ascertaining the value of appellant's property in Kentucky it is demonstrated the value thereof for each of the years 1912 and 1913 was in excess of twenty-eight millions of dollars.

The witness testified that excluding the terminal value of the company's property from the computation, the value of complainant's mileage outside of Kentucky was not in excess of the value of the mileage in Kentucky by more than $1,000.00 per mile, and also testified that the terminals of appellant had a value $145,718,000, which is more than 44% of the value of its entire property. There should at least be some corroboration by disinterested witnesses of this mythical terminal value. The history of all tax legislation shows that the terminal value of all railroads is usually claimed to be located outside of the State where a tax is sought to be recovered.

The appellants also offered as witnesses Engineers Baldwin and Davis, who testified that the value of the physical property of appellant exclusive of its rolling stock is $324,790,000. They stated that appellant had

caused to be made a physical valuation of its property and that by computations which are accurate and reliable, witnesses had ascertained the value of appellant's property to be that sum.

Witness Barnum testified that the rolling stock used by appellant in its business on its entire lines had a value of $39,185,544 during the years of 1911 and 1912. Therefore the total value of appellant's physical and tangible property was $363,975,544. This amount apportioned to Kentucky on the mileage basis would show the value of its property in Kentucky to be $44,769,091.

The District Court held in opinions on motion for final decree and again in response to appellant's petition for rehearing in 1913 case, that the board had not included property outside the State of Kentucky in the way of terminals which was not taxable in Kentucky, and that due allowance had been made therefor by the board when it made the assessment. The court also held that the board in fixing the value of appellant's property gave sufficient consideration to the claim of appellant, that its personal property which was located outside the State and not taxable in Kentucky had been embraced in the assessment made on its Kentucky property, and that the evidence did not show such property, if any there was, was embraced in the assessment made by the board.

In passing on these questions, the District Court used this language:

(See Transcript 644 and 645, page 168.)

"Then again it is urged that the finding of $280,000,000 as the fair cash value of the unit and $34,400,000 as the fair cash value of the portion thereof in Kentucky included property outside of Kentucky, in the way of terminals, which was not taxable in Kentucky and, therefore, it must be taken that the reduction to $26,679,180 was to get rid of this outside property, and

that I was in error in holding that it is to be taken that due allowance was made therefor, in arriving at $280,000,000 as the fair cash value to be apportioned. It is claimed that this is negatived by two considerations to be noted later. At any rate in the absence of its being so negatived it is to be so taken. In the case of Fargo vs. Hart, 193 U. S., 470, Mr. Justice Holmes said that the 'real question' in the case was whether 'it sufficiently appears that the board took into account property which it had no right to take into account.' In the absence then of its appearing that the board did not make due allowance on acount of these terminals, i. e., included them in the apportionment, it is to be taken that it did make such allowance and did not so include them. But it is not only a matter of presumption; there are circumstances tending to show that it made allowance for them and did not intend, at least, to include them. In the first place plaintiff claimed before the board that allowance should be made for them and the board expressly noted that it considered the claim. Then it found the fair cash value of plaintiff's unit on the stock and bond plan to be $317,525,300 and on the capitalization plan $330,155,500. For some reason in fixing the fair cash value at $280,000,000 it placed it at $37,525,300 less than the valuation on the former plan, and $50,155,500 less than that on the latter. This reduction is to be accounted for in some way. Besides the plaintiff produced affidavits before the board to show what it would cost to reproduce its physical unit and according to them it would take $363,975,545, and the board's valuation was $89,975,545 less than this. Of course it is plaintiff's claim that the cost of reproduction is not the value. But I will have to know more about such matters than I do now to understand why the physical plant of a successful concern is not worth the cost of reproduction. Besides plaintiff relies on the cost of reproduction to show the value of its terminals. In the absence of it there was and is no evidence as to the real value of such terminals so as to know just how much reduction should be made on this account. The first of the two considerations relied on as negativing the fact that any allowance was made for terminals is the finding that $280,000,000 was the fair cash value of the plaintiff's total capital stock used in its bus-

iness in Kentucky and elsewhere. In view of the context this need not mean more than that such was the real value thereof subject to apportionment though it was not so expressed. The other is the finding that the mileage of plaintiff in Kentucky was as valuable as the average mileage of the system. This finding, however, is not limited to the physical or tangible mileage. It is made in view of the fact that the ratio or gross and net earnings of plaintiff in Kentucky for the year ending June 30th, 1912, was equal to the ratio or mileage in Kentucky. According to this the intangible mileage was taken into consideration in making the finding. It is stated on behalf of plaintiff that the Kentucky earnings were composed of intrastate earnings and a mileage proportion of interstate earnings. If so, as I have heretofore indicated, in the Kentucky earnings we have the only possible true measure for determining the intangible value of the mileage in Kentucky, and Kentucky makes up in intangible mileage what it is behind in tangible. This calls for the application of the case of W. U. Tel. Co. vs. Massachusetts, 125 U. S. 530, to which I have referred in my L. & N. R. R. Co. opinions. This finding, therefore, does not negative that a deduction was made on account of the excess physical value out of the State. It is merely an added consideration for the accepting $280,000,000 as the amount for apportionment on the mileage basis.

"Then as to the personal property claimed to be outside of the State and not a part of the plaintiff's unit for apportionment. I put it in my former opinion at $36,836,865.89. It really is $40,649,137.08. The plaintiff claimed a deduction of $55,874,755 on this score before the board and now drops over $15,000,000 therefrom. It made no showing of the real value of this property or gave an itemized list thereof so that the board might make an examination as to the value thereof. Even if the board should have made a deduction on account thereof it can not be said that it did not give sufficient consideration thereto. And in the showing here we have nothing but the itemized list of the affidavit of Mr. Blauvelt that these items were not derived from railroad operations or used for railroad purposes located and having their situs outside of the State. No attempt is made to

put the court in position to determine for itself whether it is a part of its unit or any explanation given as to why plaintiff is holding on to this property, how its ownership and possession serves plaintiff, if at all, and why it is not distributed to the stockholders. Nor is any estimate of its value given. We have nothing but its cost or book value. As to this matter the case of Coulter vs. Weir and Fargo vs. Hart do not apply. In the former case the property in question had been placed in the hands of trustees for benefit of stockholders. In the latter case the facts do not clearly appear as to whether such a separation of the property from the express company had been made. It is likely that it had. All that appeared as to its use to the company was that it gave it credit, which was the case in Coulter vs. Weir."

The evidence offered on the trial of this case by appellant to impeach its assessment is in substance identical with that which was offered by the plaintiffs in the Indiana tax cases, in which cases the action of the board was attacked on the ground that the assessment fixed on property of plaintiff was in excess of the true value thereof. This court held, on review of those cases, the evidence offered was not sufficient to overthrow the assessment.

In Pittsburg C. C. & St. L. R. Co. vs. Backus, reported in 154 U. S. 421, 38 L. Ed., page 1031, Justice Brewer in reviewing the evidence offered by the railroad companies to impeach the finding of the tax board of Indiana, used this language:

"The return made by the plaintiff to the Auditor of State for the year 1891, in accordance with the requirements of the statute, was also given in evidence, which return was upon a blank furnished by the Auditor and shows an aggregate valuation of about $8,000,000. This return was sworn to by the general manager and secretary of the company. The second vice president

and general counsel of the company was called as a witness, and, after testifying to his familiarity with the property and its value, was asked its value in 1890, but, on objection, this testimony was ruled out. He was permitted, however, to give testimony as to the value in 1891, and his answer fixed the aggregate at $8,538,053, the same value that was placed upon the property by the State Board in 1890. He was asked to state the average cash value per mile of the company's property in Indiana and in the other states into which the company's road extended, treating the portion in each State as constituting a unit, separate and distinct from those of the portions in the other states, but an objection to this was sustained, and the testimony offered ruled out. He then testified to the terminal facilities in the cities of Chicago and Pittsburgh belonging to plaintiff, and their value, and the absence of terminal facilities of any particular value of any of the cities in Indiana. He was then asked if the plaintiff owned any rolling stock which was used exclusively in one of the five states in which it did business, but this question was ruled out. In response to another question, he testified that the plaintiff had no rolling stock used exclusively within the State of Indiana for special purposes. Certain questions were also asked as to the notice or knowledge which the plaintiff had of the determination made by the State Board in 1891 as to the valuation, but we have heretofore held that it is immaterial whether it had any notice thereof after the decision and adjournment of the board. The assistant engineer of the plaintiff was also called as a witness, and producing a written statement which he had presented to the State Board prior to its determination, which statement goes at length into the mileage in the different states, the gross earnings, per cent. of earnings, and the value of the track, testified that the facts in such written statement were true. Another witness, the assistant comptroller of the plaintiff, was asked what per cent. of the gross receipts of its Indiana business was derived from commerce beginning and ending wholly within the State and what from interstate business; but, on objection this testimony was ruled out. The Secretary of

State, who was a member of the State Board, was also called, and testified that the members of the board did not make an official examination or inspection of the railroad track and rolling stock of the plaintiff, being personally acquainted therewith; that they did not summons before them, or examine under oath, any person or persons acquainted with the true cash value of the property. The plaintiff also offered the return made by the Terre Haute & Indianapolis Railroad Company to the Auditor of State for the year 1891, prepared upon the same form as that upon which the plaintiff's return was made, but it was ruled out as irrelevant and immaterial, as well as the action taken by the State Board in respect to the valuation of the property of such road. This was in substance all the testimony offered by the plaintiff.

"The defendant simply called the Secretary of State, who testified that in assessing the plaintiff's property no assessment was made, except upon the railroad track and rolling stock of plaintiff within the State, and no assessment was made of any property of value outside of the State."

The lower court held in that case such evidence was insufficient to overthrow the findings of the tax board as to the value of the property of the railroad company in Indiana, and this court affirmed that finding, in this language:

"Upon this testimony the decision of the court was that there was nothing to impeach the assessment made by the State Board and in this conclusion we concur. The true cash value of the plaintiff's property in the State of Indiana in the year 1891 was a question of fact, the determination of which for the purpose of taxation was given to this special tribunal, the State Board. Whenever a question of fact is thus submitted to the determination of a special tribunal, its decision creates something more than mere presumption of fact, and if such determination comes into inquiry before the courts it can not be overthrown by evidence going only to show that

the fact was otherwise than as so found and determined. Here the question determined by the State Board was the value of certain property. That determination cannot be overthrown by the testimony of two or three witnesses that the valuation was other than that fixed by the board. It is true such testimony may be competent, and was received in this case because, taken in conjunction with other testimony, it might establish fraudulent conduct on the part of the board sufficient to vitiate its determination. It is not, however, contended by counsel that there was any actual fraud on the part of the board; that the individual members thereof deliberately violated the obligation of their oaths of office and intentionally placed upon the property of the plaintiff a valuation which they knew to be grossly in excess of that which it in fact bore, and did so with the purpose of making the plaintiff bear a larger share of the burden of the support of the state government than it rightfully should. The contention is rather that the board made a grievious mistake in placing so high a value, and that it took into consideration property outside of the State, and gave to the property within a value partly deduced from that without the State. The testimony, however, does not sustain this contention."

If the evidence offered by the railroad companies in the Indiana tax cases was not sufficient to impeach the finding of the board, we submit the evidence of appellant in the case at bar is wholly insufficient to accomplish that purpose.

Upon consideration of the evidence introduced before the board as well as that before the district court, the conclusion is inevitable that appellant's property is worth more than the sum at which it was assessed and the district court did not err in so holding, though it did err in holding the assessment should have been made at 60% of full value.

THE METHOD PRESCRIBED BY THE STATUTE FOR ASCERTAINING THE VALUE OF THE CORPORATE FRANCHISE OF A RAILROAD COMPANY SUBJECT TO TAXATION IN THE STATE.

The assessment complained of herein is also attacked on the ground that the board pursued an erroneous method when ascertaining the value of complainant's franchise subject to taxation in Kentucky. The appellant contends the statute relating to the assessment of its franchise required the board in estimating and fixing the value thereof to first find the value of appellant's entire property (referred to and designated as capital stock in the statute) or capital stock and deduct therefrom the value of its tangible or physical property wherever situated. The remainder thus found is the value of the franchise of the corporation, which remainder or franchise should be apportioned to the State for taxation on the basis the proportion of the mileage of appellant's lines of railroad in the State bears to the mileage of its lines within and without the State.

(See paragraph 7, appellant's bill, page 10 of Trancript.)

The interpretation the appellant puts upon the statute is not correct and if adopted would not accurately measure the value of its property in this State.

Section 4081 of the statute reads:

"The board shall fix the value of the capital stock of the corporation, company or association, as provided in the next succeeding section, and from the amount thus fixed, shall deduct the assessed value of all tangible property assessed in this State, or in the counties where situated. The remainder thus found shall be the value of its corporate franchise, subject to taxation as aforesaid."

The appellees state the true interpretation of this statute requires the board in ascertaining and fixing the value of the corporate franchise of railroad companies operating lines of railroad within the State to first find or ascertain the value of the entire property or capital stock of the corporation under consideration; secondly, it shall ascertain the mileage proportion thereof in Kentucky and consider this mileage proportion in fixing the value of the company's property in the State. From the amount fixed or determined by the board to be the value of the capital stock or property of the corporation in the State, shall be deducted the assessed value of the tangible property of the corporation in the State. The remained will be the value of the corporate franchise subject to taxation therein.

The Court of Appeals of Kentucky so construed the statute in the case of Commonwealth of Kentucky vs. Covington and Cincinnati Bridge Company, reported in 114 Kentucky, page 343.

The facts appearing in that case are these: The Covington and Cincinnati Bridge Company owned a bridge spanning the Ohio river, 59 per cent. of the length of which was within the territorial limits of Kentucky, the remainder in the State of Ohio. The Board of Valuation and Assessment for the State of Kentucky assessed its corporate franchise for taxation.

The method employed was as follows: The board first ascertained the value of the entire property or capital stock of the bridge company and apportioned that sum to Kentucky on the mileage basis, which sum was fixed or determined to be the total value of the property of the bridge company in the State; from this amount was deducted the assessed value of the tangible property of the company in the State; the remainder thus found was determined to be the value of the franchise subject

to taxation therein. The bridge company instituted suit to enjoin the collection of a part of the tax on the grounds that the board in making the assessment against the property of the bridge company had pursued an erroneous method or mode of assessing the value of its franchise.

On these facts the following questions were certified to the court for decision:

"(1) Does the defendant (the bridge company), owe the plaintiff (the Commonwealth), the sum of $464.84 or any part thereof, on account of a tax on its franchise for the year 1901?

"(2) What method or basis should be adopted by the State Board of Valuation and Assessment for fixing the value of defendant's franchise for taxation by the Commonwealth of Kentucky?"

The circuit court adjudged that the board in making the assessment adopted an improper mode, and that the defendants by the payment to the Auditor of the sum of $857.32, had fully paid to the State the tax on its franchise for the year of 1901, and owed no part of the $464.84 claimed by the State, in addition to the amount which had been paid.

The lower court reached its conclusion by taking the total value of the bridge company's capital stock and bonded indebtedness, $1,330,000. From this amount it deducted the tangible property assessed for taxation in Ohio, $237,984, which left a balance of $1,092,016. As 59% of the bridge lay in Kentucky and 41% in Ohio, it took 59% of $1,092,016, which is $664,289, and from this it deducted the tangible property assessed in Kentucky for $452,000, which left a balance of $192,289 as the value of the Kentucky franchise.

It will be observed from the foregoing statement the method which the bridge company claimed should be adopted in assessing the franchise of a corporation is identical with the method suggested by appellant in this case. The contention of the Commonwealth as to the proper method of assessing the franchise of a corporation is stated in this language:

"It is insisted for the State that the proper way to arrive at the valuation of the franchise, is to take the total value of $1,330,000 and get 59%, which is $782,700, and this represents the total of the tangible property and of the franchise in Kentucky. Therefore, if we deduct from this total $782,700, the assessment of the tangible property in Kentucky, $330,700 is the value of the franchise. The board fixed the value of the franchise at $278,349, or considerably less than the result thus obtained."

The Appellate Court decided the method urged by the Commonwealth in this action was the statutory mode of ascertaining the value of a franchise in Kentucky. The court said:

"We therefore conclude that the basis urged by appellant is the proper one for the assessment of the property under the agreed facts, and the board, having fixed a lower assessment than this would make, the court erred in not enforcing the collection of the tax on the assessment made by the board."

The District Court carefully considered the claims of appellant that the board pursued an erroneous method in fixing the value of its franchise. In its opinion on motion for temporary injunction, the court said:

"In the case of the Southern Railway Company vs. Commonwealth, 113 Ky., 657, the railroad companies of the State were willing to concede that the assessed value of the tangible property in the State should be deducted

from the part apportioned thereto before an apportionment amongst the subordinate jurisdictions and claimed that by virtue of the provisions as to deducting same after such apportionment from the parts so apportioned that they were entitled to have same deducted again. Thereby they would get a double deduction, and in this way get back the taxes which they were bound to pay on their tangible property as such. But the Court of Appeals could not see it that way.

"There is, therefore, absolutely nothing in section 4081 that allows of a deduction of the value of the tangible property both in this State and out of it from the valuation of both tangible and intangible property everywhere and then an apportionment of a part of the balance to this State on a mileage or any other basis. The thought of the section must be taken to be that a part of the valuation of the entire property is first to be apportioned to this State and that then the assessed value of the tangible therein is to be deducted therefrom. And to this conforms the thought of the companion sections. In none of the sections relating to the assessment of the franchises of companies covered by section 4077 is there the remotest reference to the deduction in any contingency of the value of the entire tangible property. In so far as any provision is made for a deduction it is always a deduction of the assessed value of the tangible property in this State. * * *

"It seems to me, therefore, that the idea that the statute under which the board acted in making the assessment complained of requires first a deduction of the total value of the entire tangible property from the total value of the entire property and then an apportionment, is utterly without warrant in the provisions thereof, and that there can be no doubt that what it contemplates is first an apportionment and then a deduction, the deduction to be of the assessed value of the tangible property in this State. In other words, the thought of the statute is first apportionment and then deduction and not first deduction and then apportionment, and that the deduction is of the assessed value of the tangible property in the State and not of the value assessed or otherwise of the entire tangible property in and out of the State."

Section 4081 of the Kentucky Statutes provides with respect to the deduction of tangible property as follows:

The statute reads:

"The board shall fix the value of the capital stock of the corporation, company or association, as provided in the next succeeding section, and from the amount thus fixed, shall deduct the assessed value of all tangible property assessed in this State, or in the counties where situated. The remainder thus found shall be the value of its corporate franchise subject to taxation as aforesaid."

The Court of Appeals has construed this statute in the following cases:

In the case of Commonwealth vs. Cumberland Tel. & Tel. Company, 30 Ky. Law Rep., 724, the court, in speaking of the deduction of tangible property, said:

"When the entire capital stock of a corporation is valued, this represents all of its property of every kind, for every part of the property of the company goes to make up the value of the capital stock. The only deduction from this sum total, authorized to be made by the statute, is the assessed value of all the tangible property assessed in the State, or in the counties where situated; and that the board may know what deduction to make, the corporation is required to report the amount and kind of tangible property it owns in the State, where situated, assessed or liable to assessment. As the Board of Valuation is not authorized to deduct from the assessment anything but the tangible property assessed or liable to assessment, in this State, it necessarily follows that all other property except this is included in its assessment."

In Commonwealth vs. L. & N. R. R. Company, 142 Ky., 663, in passing on the question of the deduction of tangible property that should be made from the capital stock, the court said:

"But inasmuch as the Board of Valuation and Assessment in arriving at the value of the franchise, must deduct from the total value fixed by it upon the capital stock of the company, the assessed value of its tangible property, as found by the Railroad Commission, it is readily seen that the assessment is at last made by the Board of Valuation and Assessment."

As the Railroad Commission of Kentucky could only assess railroad property in Kentucky, it is evident that the deduction of tangible property required in that case to be made from the capital stock was the tangible property in Kentucky.

In Commonwealth of Kentucky vs. U. S. Express Company, 149 Kentucky, 759, in speaking of the deduction of tangible property, the court said:

"The statute also provides that when the capital stock of a corporation or association is fixed there shall be deducted from it the assessed value of all tangible property assessed in this State, and that the remainder shall be the value of the corporate franchise, subject to taxation. This provision of the statute applies to foreign, as well as domestic carriers, and when the State undertakes to find the value of the franchise of a carrier, there must be deducted from the value of the capital stock, as ascertained in the manner pointed out in the statute, the assessed value of its tangible property in the State, the remainder being the value of the franchise. This being so, it is manifest that the value of the assessed tangible property in this State, exceeds the value of the franchise subject to taxation in this State, there is no franchise to assess."

Appellants rely upon the language of Judge Lurton in Coulter v. Weir, 127 Fed. Rept., 908, to maintain their contention. In discussing this question, Judge Lurton said:

"If the tangible property, having a situs outside the State, be included in the valuation of the company's intangible property, the purpose of the law being to tax only intangible property is defeated. We, therefore, read the act as the Supreme Court seems to have read it in the Adams Express Company vs. Kentucky, as requiring the deduction of tangible property from the gross value of all corporate assets whether such tangible property be within or without the State."

The case referred to by Judge Lurton is reported in 166 U. S., 961. The language of that opinion upon which he based his conclusion, evidently, is that found on pages 963 and 964, where this court said:

"But taking the whole act together, and in view of the provisions of Sections 4078-4081, we agree with the circuit court that it is evident that the word, 'franchise,' was not employed in a technical sense, and that the legislative intention is plain that the entire property, tangible and intangible, of all foreign and domestic companies, and all foreign and domestic companies possessing no franchise, should be valued as an entirety, the value of the tangible property be deducted, and the value of the intagible property thus ascertained be taxed under these provisions; and as to railroad, telegraph, telephone, express, sleeping car, etc., companies whose lines extend beyond the limits of the State, that their intangible property should be assessed on the basis of the mileage of their lines within and without the State.

"So far as the commerce clause and the Fourteenth Amendment of the Federal Constitution are concerned, this scheme of taxation is not in contravention thereof, as already determined in Adams Express Co. vs. Ohio State Auditor, 165 U. S., 194; (ante 683) and cases cited."

We submit a careful reading of this opinion does not warrant giving to that language the construction in respect to the deduction of tangible property that was given to it by Judge Lurton. This learned Justice was himself in doubt as to the construction given this statute, by this court. This is evident from the language he chose when reviewing the case.

He said in this connection:

"We, therefore, read the act as the Supreme Court seems to have read it in the Adams Exp. Co. vs. Kentucky."

The District Court in commenting on the opinion in Coulter vs. Weir, said:

"Undoubtedly this has the meaning which Judge Lurton attributed to it. But the case involved no question of method and hence it did not call for accuracy of statement regarding the matter. * * * * What is thus said, therefore, is an inaccurate *obiter dictum*. So was Judge Lurton's holding. There was no question of method involved in the Weir case. It involved the same question that was involved in the Fargo case and that is whether stocks and bonds in New York owned by the Adams Express Company and not used in its business could be treated as part of its property unit, a part of which was in this State and assessable here. There is, therefore, nothing in either of the cases relied on against the position I feel constrained to take on the matter now under consideration. And on the contrary the decision in the Covington and Cincinnati Bridge Company case supports it. This position of plaintiff, therefore, is unsound."

It is also claimed that the construction of the statute contended for by appellant was approved in the Henderson Bridge Company vs. Commonwealth of Kentucky, and that method of determining the value of the

franchise of the bridge in Kentucky, was used by the board. It is true, the Board of Valuation and Assessment, in making the assessment complained of in that case, pursued the method contended for by appellant, but it is also true that the method of making that assessment was not drawn in question in that suit, but the legality of the tax was the sole question before the court. Judge Hobson in the case of Commonwealth of Kentucky vs. Covington and Cincinnati Bridge Company, *supra,* shows the method of assessing the bridge, in the Henderson Bridge case, was erroneous and was done in a way that excluded value from Kentucky. The method of assessing the bridge was not questioned in that case. The Commonwealth was seeking to collect the taxes on the assessment as made, so the question of correct method of ascertaining the value in Kentucky was not before the court. Judge Hobson said:

"It is insisted for appellee that the court below followed the case of Henderson Bridge Co. vs. Commonwealth, 99 Ky., 623 (17 Rep., 389), (31 S. W., 486, 29 L. R., 73), and that this case has been approved in a number of subsequent opinions by this court. But that suit, and all those following it, were actions by the Commonwealth to recover taxes based on the assessment made by the board. The State was not complaining of the assessment; on the contrary, it was endeavoring to enforce it. It had no right of action except upon the assessment, and no question therefore could be presented by the State as to the propriety of the assessment which it sought to enforce. The Bridge Company resisted the assessment, and in response to this, the court said, at the bottom of page 642, 99 Ky., that the board followed out the line claimed by the defendant. *But this action of that board did not prevent another board for any other year from adopting a different line, if the law warranted it. There is nothing, therefore, in any of these cases determining that the board did not have the right to adopt another basis of assessment.*" (Italics our.)

From this language of Judge Hobson, it is obvious that the Court of Appeals of this State did not, in the Henderson Bridge case, approve or sanction the method of ascertaining franchise values in Kentucky that complainant contends the board should now adopt and pursue in assessing franchise of complainant, but on the contrary held in this case the method that the board did adopt was not warranted by the statute.

In view of the interpretation placed upon the statute by the State Court we must conclude the District Court did not err in holding the statute did not require the board to deduct appellant's tangible property from its capital stock and apportion the remainder on the mileage basis when finding the value of its franchise.

IF THE ASSESSMENT MADE AGAINST APPELLANT'S FRANCHISE IS NOT MORE THAN IT SHOULD BE, IT SHOULD BE SUSTAINED BY THE COURT NO MATTER HOW IT WAS ARRIVED AT BY THE BOARD.

To successfully attack an assessment on the ground that the assessing officer pursued ar erroneous method in ascertaining the value of the property for assessment and taxation, it must be shown that not only the method employed in making the assessment was wrong but the application of the erroneous rule adopted in the case under consideration resulted in an over-valuation of the complainant's property. The methods employed in finding franchise values are but the means to the end.

It is not material how the board arrives at its conclusion, or what method it pursues when finding the value of property for taxation, if its judgment as to the value thereof is correct. In other words, it is important that the assessing officer arrive at a correct judgment as to the value of the property under considera-

tion, but it is unimportant by what process of reasoning he arrives at that conclusion. This rule was admirably stated by the Court of Appeals of Kentucky in the case of Commonwealth of Kentucky vs. Covington and Cincinnati Bridge Company, *supra.*

The court said (at page 349):

"It is also insisted for appellee that the basis adopted by the board in this case, or the mode by which it reached its result, was erroneous. If this be conceded, still, if the result reached by the board was correct, or not more onerous on appellee than it should have been, the assessment can not be disturbed; for no principle is better settled than that, if an officer is right in his conclusions, the fact that he gives bad reasons for it or reached it in the wrong way is immaterial."

In the case of the Bridge Company vs. Mayer, reported in 31 Ohio State, 327, the court in a well considered case said:

"A *prima facie* case is made by showing the assessment. Is it a good answer to this *prima facie* case merely to show that the tax assessed or valuation on which it is based, is arrived at by a wrong process, without showing the sum too large? A right judgment rendered upon a wrong reason has always been held to be good. There is nothing in this record to show that $536,834 is an over-valuation of that part of the bridge belonging to Ohio, even should we take low water mark to be the State line."

In the case of the State vs. Wells Fargo Co., 150 Pacific, 836-845, recently decided by the Supreme Court of Nevada, the court considered alternative methods of valuation and apportionment of property for assessment purposes. The court approved the result but expressed no opinion as to the method by which the result was obtained.

Chief Justice Norcross said:

"Whether the system of determining the valuation of appellant's property applied by the State Board of Assessors was correct or not, it does not appear that it operated to impose an excessive valuation. The fact that erroneous methods may in good faith have been used to determine valuation is immaterial, we think, if an excessive valuation did not result therefrom."

In the case of People vs. State Board, et al., 126 N. Y. S., 1063, the court said:

"A party assailing an assessment must prove that the method of assessment was incorrect and does not represent the fair value of the property assessed."

In the light of these decisions, the conclusion must be reached that when the validity of an assessment is attacked on the ground that the method employed in arriving at the valuation of the property was erroneous, the true test to be applied is, was the judgment of the Board of Assessing Officers correct and not what were the mental processes of the officers in arriving at their conclusions.

THE COURTS WILL NOT CONTROL OR INTERFERE WTH THE DISCRETION AND JUDGMENT OF ASSESSING OFFICERS, AS TO VALUATIONS MADE, UNLESS THE JUDGMENT IS FRAUDULENT AND OPPRESSIVE.

The action of an assessing officer, in fixing the value of the property in the State subject to taxation, is final and conclusive on the State and taxpayer alike, and will not be set aside by the court, unless the officer, "Proceeded upon an erroneous principle or adopted an improper mode or manner of estimating the value," of the property under consideration, and by proceeding upon an

erroneous principle or by adopting an improper mode arrived at a judgment that was prejudicial to the taxpayer.

The courts only have power to review the action of the board or any other assessing officer in this State, when the assessing officer acts fraudulently or mistakenly, to the prejudice of the taxpayer. If the courts were called upon to hear the complaint of every taxpayer in the State who is dissatisfied with the assessment against his property, and to review the action of all the assessors in the State, and determine and pass upon the merits of each controversy, litigation over these matters would be interminable, and the orderly administration of justice would be rendered impossible. So the legislature wisely provided that certain tribunals, created by statute, should finally hear and determine tax controversies between the State and its citizens. The high degree of consideration to which such judgments are entitled to be accorded by the courts, and the lack of power in the court to interfere with the judgment and discretion vested in the assessing officers, and the presumption that must be indulged by the court and all others, that they (assessing officers) have acted honestly and within the limits of the power vested in them, is stated in the opinions quoted from in the following cases:

Judge Taft, in the case of Taylor vs. L. & N. R. R. Co., reported in 88 Fed. Rep., 360, said:

"The complainant makes a series of objections to the validity of the assessment of defendants, based on the data upon which the assessments are made, and the refusal of the assessors and the defendants to consider certain evidence tendered by the complainant. We do not propose to discuss the objections seriatim. It is sufficient to say that we find nothing in the evidence that was before the two boards which they might not properly consider, under the laws of Tennessee, as circumstances to

aid them in reaching a conclusion as to the value of that part of the railroad of complainant lying in Tennessee. Nor do we discover anything in the record to indicate that such evidence was wrongfully applied. We do not find anything in the record or affidavits affirmatively showing that the boards have included in their assessments property of the complainant not in Tennessee, and the defendants, in their report of the assessment, and in their answer, expressly deny that any such property was included. The exclusion of certain expert evidence to show how unreliable a standard of value are market reports of stocks and bonds we do not regard as material. Even if this were a direct proceeding to review the action of the defendants, as upon error (which it is not), the ruling could hardly be the subject of criticism, for the matters touched upon in the affidavits were matters of general knowledge, which the defendants and the assessors might be presumed to know. The relevancy of such items of evidence as the market value of bonds and stocks, and the amount of gross earnings in reaching a conclusion as to the value of a railroad or telegraph line, has been so often recognized by the Supreme Court of the United States that we need not discuss it, Railroad Co. v. Backus, 154 U. S., 424, 14 Sup. Ct. 1114; Henderson Bdg. Co. v. Kentucky, 166 U. S., 150, 17 Sup. Ct., 532; Adams Express Co. vs. Ohio State Auditor, 165 U. S., 194, 17 Sup. Ct., 305; Id. 166 U. S., 185, 17 Sup. Ct., 604. It is contended that the law of Tennessee, as declared by its Supreme Court, is that each line of railroad must be valued by itself, and not as part of a system, and therefore that the unit theory, upon which the foregoing decisions were based, has no application to Tennessee. If this be true, it only reduces the size of the unit, but it does not destroy the evidential bearing of stock and bond values upon the value of railroad property; and we must presume, in a collateral attack upon the action of the board, such as this is, in the absence of any showing to the contrary that within the limits of the reasonable discretion and judgment vested in the defendants, they gave proper consideration to the Tennessee rule, if it differs from the general rule, in weighing and applying the evidence of stock and bond values to the issue before them."

In the case of Chicago B. & Q. R. Co. vs. Babcock, reported in 204 U. S., 585, 51 L. Edition, 636, this court, delivering its opinion through Justice Holmes, said:

"But the action does not appear to have been arbitrary except in the sense in which many honest and sensible judgments are so. They express an intuition of experience which outruns analysis and sums up many unnamed and tangled impressions—impressions which may lie beneath consciousness without losing their worth. The board was created for the purpose of using its judgment and its knowledge. State Railroad Tax cases, 92 U. S., 575, 23 L. Ed. 663; State ex rel. Bee Bldg. Co. vs. Savage, 65 Neb. 714, 768, 769, 91 N. W. 716; Re Cruger, 84 N. Y., 619, 621; San Jose Gas Co. vs. January, 57 Calif. 614, 616. Within its jurisdiction, except, as we have said, in the case of fraud or a clearly shown adoption of wrong principles, it is the ultimate guardian of certain rights. The State has confided those rights to its protection and has trusted to its honor and capacity as it confines the protection of other social relations to the courts of law. Somewhere there must be an end."

In the case of Albin Co. vs. The City of Louisville, reported in the 25th K. L. R., page 2055, the validity of the tax levied and assessed was challenged on the grounds that the assessment was arbitrary and contrary to the evidence. It was alleged by the tax payer that he had listed his property with the Assessor by filing a schedule, which schedule was laid before the Board of Equalization of the city and the board rejected the schedules so furnished by the tax payer and arbitrarily fixed the amount of taxes which the appellant should pay. In disposing of this contention the court used this language (see page 2056):

"Appellant alleged that the action of the Board of Equalization in fixing the amount of the taxes which it should pay on its property was arbitrary, contrary

to the evidence before it, and was entirely unsupported by the evidence.

"It was not stated in the pleadings in what manner or particular this board was arbitrary except that it rejected the evidence of appellant and reached its conclusions without any evidence. It may be that the conclusion reached appeared arbitrary to appellant, when, in fact, it was not arbitrary, but it admits that its officers appeared before the board and testified. This board has the right to give such weight to this evidence of appellant's officials as it deemed proper, and if, upon the whole facts and circumstances presented, it fairly concluded the assessment made was proper, then it was the duty of appellant to pay same. The statute confides these questions of value to the Board of Equalization and the court has no power to review its conclusions in that respect, unless the board has proceeded corruptly or fraudulently, which is not alleged or claimed in this case.

"It is further claimed by the appellant that in fixing the valuation, the Board of Equalization acts as a legislative court contrary to Section 135 of the Constitution, which section reads as follows: 'No courts save those provided for in this Constitution shall be established.' It also refers to the case of Pratt vs. Breckinridge, 23 Ky. Law Rep., 1356, for authority to support its contention. The direct point decided in this case was simply that the State Board of Contest, composed of three commissioners, was a legislative court within the meaning of the Constitution.

"In our opinion, this decision does not furnish authority for holding that a mere Board of Equalization, which passes on the questions of value of property listed for taxation, with power to approve, increase or decrease the same, is a legislative court.

"It certainly was not contemplated by the framers of the Constitution to do away with such tribunals, which had never before by any decision of this court been held to be a judicial tribunal or vested with the powers and duties of a court. If the legislature is powerless under the present Constitution to provide for such a tribunal as a Board of Equalization then the

whole revenue system of the State, counties and municipalities, must give way, and hereafter when a question is made as to the value of property fixed by the assessor for taxing purposes, the only remedy will be to provide for an appeal to the regular courts and thereby make the judges thereof the final assessors. In our opinion such is not the proper construction of Section 135 of the Constitution."

In the case of Southern Pacific Co. vs. Commonwealth, reported in 134 Ky., 410, the court said:

"They had before them a very difficult problem. In proceedings instituted by revenue agents, property belonging to the company was assessed each year as omitted, amounting to between $2,000,000 and $3,000,000, and all these taxes have been paid year after year by the company. There is an entire failure to show fraud or mistake. The proof simply shows that the board, being in great doubt how to assess the franchise or how to determine its value, finally lumped it at $1,000,000. This was an exercise of judgment on their part. The statute confided to them valuing of the property. The taxes were paid upon the valuation. Their action was not void. They discharged the duty devolved upon them by the statute as best they could, and if they erred in judgment, that is no reason why the court should award a mandamus against them requiring them to meet again and make an assessment of the franchise. If a mandamus were awarded, the present board would only be able to make another lump assessment on the same report."

In the case of Henderson Bridge Company vs. Commonwealth, 99 Ky., 623, the court laid down the rule with respect to the effect and conclusiveness of the finding of the Board of Valuation and Assessment in assessing the franchise of a corporation, in the following language:

"It should be further said that the findings of this Board of Valuation and Assessment partake of a judi-

cial nature. The defendant had its day in court. It did appear on notice before the board and on evidence made its defense. And on this hearing, that board rendered its decision in fixing the value of the franchise of defendant, granted by the authority of the State of Kentucky, and this finding, if not conclusive, is entitled to a very high degree of consideration and authority, and it should not be lightly set aside or disregarded by the courts, unless the board proceeded upon an erroneous principle or adopted an improper mode or manner of estimating the value of the franchise, or unless fraud is charged and shown to exist."

Coulter, Auditor vs. Louisville Bridge Co., 114 Ky., 43:

"On the contrary, it was shown that the assessing board actually acted upon the identical evidence required by the statute, exercised their judgment as to fixing the value of the property, and found the fact to be that when there was applied to appellee the same standard by which the valuation of the franchise of all other corporations in this State was arrived at, and the one approved by this court in the case of Henderson Bridge Co. vs. Commonwealth, 99 Ky., 623 (17 R., 389), (166 U. S., 150), 31 S. W., 486, 29 L. R. A., 73, the appellee's franchise had no taxable value. That this conclusion was honestly arrived at and was correct is not denied. If the board of 1898 had fixed a valuation of $100,000 on appellee's franchise, acting under the same circumstances as shown in this case, and appellee had paid the tax, could appellant and his associates constituting the present board, have ignored that action, and revalued and reassessed the franchise? If they could, then there is no end to this thing. Nor would there be any assessment or listing of any property for taxation by any assessing board or assessor.

"We are of the opinion and hold that when the proper assessing officers, within the time and substantially in the manner prescribed by statute, have acted in considering and fixing the valuation upon property liable to assessment for taxation, and no relief has been obtained within the time allowed by statute for cor-

recting their action, if erroneous, that action is final. The judgment and action of the assessor based upon the legal evidence then obtainable and at hand, and as fixed by statute, when recorded in the proper tax lists, in the very nature of things, should be conclusive upon the State, as well as against the tax payer. Such being the judgment below, it is affirmed."

Pittsburg & St. L. R. R. Co. v. Backus, 154 U. S., 421:

"Whenever a question of fact is thus submitted to the determination of a special tribunal its decision creates something more than a mere presumption of fact, and if such determination comes into inquiry before the courts, it cannot be overthrown by evidence going only to show that the fact was otherwise than as so found and determined. Here the question determined by the State Board was the value of certain property. That determination cannot be overthrown by the testimony of two or three witnesses that the valuation was other than that fixed by the board. It is true, such testimony may be competent, and was received in this case, because, taken in conjunction with other testimony, it might establish fraudulent conduct on the part of the board, sufficient to vitiate its determination."

San Diego Land & Town Co. vs. City of National City, 174 U. S., 740; L. Ed., Book 43, 1155:

"But the court cannot, after the board has fully and fairly investigated and acted, by fixing what it believes to be reasonable rates, step in and say its action shall be set aside and nullified, because the courts, upon a similar investigation, have come to a different conclusion as to the reasonableness of the rates fixed. There must be actual fraud in fixing the rates, or they must be so palpably and grossly unreasonable and unjust as to amount to the same thing."

In an action praying for a mandamus to compel an assessing board in Nebraska to assemble and fix a dif-

ferent valuation upon property, than that at which it had valued it for taxation, the court, in an exhaustive and well-considered opinion, in discussing the powers and duties of assessing, and the right of the courts to review its findings, used this language (Nebraska Rep., Vol. 65, 768):

"It will thus be seen that the view-point occupied by the observer makes a vast difference as to what is the proper valuation of railroad property for assessment purposes, regard being had to the very just rule that valuation should be uniform, and thus all property be required to bear its just proportion of the public taxes. It would be futile, as will hereafter be seen, for us to undertake to determine with any degree of nicety, what is the true standard of valuation of property as generally returned and listed for the purposes of taxation. We can only inquire into the matter for the purposes of determining whether respondents, in assessing the properties which it was their duty to assess, have expressed an honest judgment as to the assessable values, upon sufficient information, or whether the method pursued in ascertaining and fixing the value of the property assessed was in such wanton and reckless disregard of their duties as to warrant the conclusion that they acted fraudulently. It is not within the province of this court to review the assessment made by the board, and to raise or lower it as equity and good conscience might seem to require. We can only determine whether the board has proceeded in a legal manner, and if so, we cannot direct further action, even though we may disagree with the conclusion reached, or regard the method of procedure as not the most appropriate and best calculated to secure with the greatest certainty and accuracy a true valuation of the property assessed. If they have acted by assessing all the property, it is their duty, under the law, to assess and have proceeded in such manner that it cannot be said they have acted fraudulently in that which they have done the court is powerless to correct the error, even though it be conceded that the assessment as made is lower

than in justice it should have been. By the laws of the State, the respondents, as its officers, are constituted a special tribunal or assessing board, charged with the duty of assessing railroads and other corporate properties mentioned in the statute, over which they are given exclusive jurisdiction for that purpose. They are required to assess all such properties at a valuation so that the corporations assessed may be required to pay their just proportion of the taxes needful for the public revenues. In performing the functions allotted to them, the making such assessment, in the very nature of things, they are invested with certain discretionary powers requiring the exercise of an honest judgment as to the proper valuation to be placed on such property for assessment purposes; and with such discretion, when exercised honestly and in good faith, the courts cannot interfere. It will hardly be contended that the court can be appealed to for the purpose of trying the question of whether any individual assessor of the thousands throughout the State has valued a particular piece of property which he is required to assess at its true valuation, to be determined by some approved scientific test or method. If the assessor acts honestly, if he exercises his best judgment, and actually assesses the property, and there is no element of fraud in what he does, an assessment so made must stand (except as it may be reviewed and equalized by the properly constituted authorities in the manner provided by law), even though, by the application of the most correct and certain tests, the property so assessed was valued above or below what in truth and justice it should be. The State Board of Equalization, it must be admitted, is an administrative body, clothed with quasi-judicial powers in regard to the assessment of property it is by law required to value and assess. It has the right to exercise a fair discretion in expressing its judgment as to the valuation of such property; and when it has once acted, and there is no fraud shown, its judgment cannot be controlled by the writ of mandamus."

The courts of this State have declared the court will not enjoin the collection of a tax, unless it is shown

the assessment is so excessive as to import fraud on the part of the assessor, or amount to spoliation.

In City of Covington vs. Shinkle, 25 K. L. R., 73, the court says:

"Plaintiff testified that the property was assessed at $8,500 for 1897, 1898 and 1899; that during the year 1900 the building on the property was torn down and rebuilt and that in addition to the old materials, about $4,000 was expended in rebuilding; that he listed it for taxation for the year 1900, after it had been rebuilt, at $8,500, but that the city assessor raised the valuation thereon to $11,500; that he then appealed to the Board of Equalization for a reduction of the assessment to $10,000, and that upon the hearing of the case they advanced the assessment to $14,000; that he received a gross income on the property of $115 per month. A number of witnesses introduced by the city, testify that $14,000 was the fair, saleable value of the property. Section 3179 of the statutes, which is a provision of the charters of cities of the second class, to which appellee belongs, provided that all real estate in the city shall be assessed at its fair cash value, estimated at a fair voluntary sale, as of the 15th of September in each year.

"And Section 3181 provides that 'there shall be a Board of Equalization, to consist of three citizens, who shall hear all complaints against the assessment made by the assessor and shall determine the same. They shall increase or decrease assessments on like property to make all assessments as uniform as may be, or to place a true value on the property assessed.'

"The statute does not provide for an appeal from their valuation to the courts, and courts of equity will not enjoin the collection of a tax upon the ground that the property has been assessed too high, unless it be shown that the assessment is so excessive as to import fraud in the assessor or amount to spoliation.

"(Russell, Sheriff vs. Corlish, Litsey, Etc., 10 K. L. R., 25; Royal Wheel Co. vs. Taylor Co., 20 K. L. R., 904). The evidence does not show the assessment complained of to belong to either category.

"For reasons indicated, the judgment appealed from is reversed and cause remanded, with directions to dissolve the injunction and dismiss plaintiff's petition, and for further proceedings consistent with this opinion."

It is not alleged, nor is it attempted to be shown, that the levy and assessment of the tax complained of in this action amounts to confiscation or spoliation of its property within the State or elsewhere. The amount of taxes it will have to pay if this assessment is sustained, will be no greater part of its income than other corporations of this class in the State will have to pay of their income for taxes.

It is not alleged, nor has there been any effort to prove that the collection of the tax, levied and assessed by the State, will so affect the earnings of the road as to impair its ability to meet any of its obligations or to seriously affect its revenues.

FRAUD.

The appellant attempted to impeach the assessments complained of on the ground that the members of the board in making the assessment, were guilty of bad faith or fraudulent conduct. The allegations of the bill in this respect are inadequate and there is an entire failure of proof on this branch of the case. In its 1912 bill the appellant in attempting to charge the board with misconduct alleged:

"That the excessive, exorbitant and extravagant amount of $14,746,857 was fixed by said Bosworth, Rhea and Crecelius as the value of complainant's franchise for Kentucky and so assessed by them, not because it was or is a fair amount to be fixed as such assessment, but arbitrarily and without reference to the real value of such franchise and because of the financial straits of the Commonwealth of Kentucky and the circumstances

attending such action of said defendants in assuming to act as said Board of Valuation and Assessment."

(See Transcript 642 and 643, page 8.)

The bill then recites that the State of Kentucky had become financially embarrassed and that it had outstanding warrants amounting to more than $2,250,000.00 and the State had no funds available to pay same. That the General Assembly had at its last session voted extravagant appropriations for numerous private purposes and also enacted a law providing for pensions for veterans of the Confederate army without making provisions for raising money by taxation to meet these large appropriations. That the legislature declined to increase the tax rate for State purposes because of the odium attached to the increasing of the tax rates. That a bill was proposed in the General Assembly to create a public utilities commission for the purpose of assessing public utilities, service corporations including railroads, to the end that a heavier burden of taxation might be devolved on such corporations without increasing the burden of taxation of natural persons. That the members of this board or some of them publicly and privately assured the members of the General Assembly of their ability and willingness to make such franchise assessments on railroads and other public service corporations as would secure the State all the benefits to be derived by the enactment of a public utilities bill and would provide the State with funds from taxation of railroads and other corporations to pay off its accumulated debt during their term of office.

That pursuant to and in accordance with said assurances, the defendants enormously increased the franchise assessments of the leading corporations, public service corporations in the State.

The appellant then set forth the assessment made against the leading public service corporations in the State in the year of 1911 and the assessment made by this board thereon in 1912 which showed an increase on the assessment of all the leading railroad corporations and other corporations in the State.

The fact that appellant and all other corporations in the State had previous to 1912 been the beneficiaries of low assessments does not prove the 1912 assessments were exorbitantly or at all too high.

The statement that franchise of complainant was assessed, in the year 1912, 300% higher than it was in 1911, unaccompanied by proof that the 1911 assessment was correct, and a showing that no addition in value or improvement has been made to the property in the interim, does not in itself justify the conclusion or belief that the higher assessment is wrong, and the lower is right. The higher may be correct, and the lower might have been wrong, for ought this naked declaration proves. If the correctness of either assessment, the high or the low, is to be determined by comparison one with the other, which of these is to be considered as the standard of measurement? This artful statement of the fact, that a large increase in the assessment of complainant's had been made, was obviously prompted by the hope, and with the expectation, of creating a prejudice and suspicion against the validity of the higher assessment.

These allegations do not state facts that amount to a charge of fraud against defendant and no proofs whatever were offered to sustain the charges made.

In the 1913 case the appellants after setting forth certain facts in relation to the factors that should be considered by the board in estimating the value of its property in Kentucky, make this allegation in its attempt to charge defendants with fraudulent conduct:

"Whereby it appears that said Rich and said defendants arbitrarily pursued a plan or method of valuation or assessment obviously worthless and solely for the purpose of reaching a large amount of money as a result regardless of real value, wherefore it appears, and plaintiff says that the valuation so made by the said Rich and perfunctorily adopted by the said defendants as aforesaid is excessive, exorbitant and fraudulent and made regardless of the evidence and the facts shown to the board; that they intentionally ignored the excess value of plaintiff's tangible property outside the State, and denied the plaintiff the benefit of equalization to which it was entitled as aforesaid to the great and irreparable damage of the plaintiff whereby plaintiff was by the defendants, assuming to act as the Board of Valuation and Assessment of the State of Kentucky, a State instrumentality for assessment and valuation of property for franchise taxation for said State, deprived of its property without due process of law and denied the equal protection of the law in violation of the Fourteenth Amendment to the Constitution of the United States and in disregard of the laws of said State, and plaintiff hereby sets up and relies upon the protection of said Federal and State Constitutions."

The charges of appellant that the board did not give proper or any consideration to the claims of appellant in that it failed to consider the evidence offered by appellant as to the excess value of its property outside the State and the value of its non-operative property is wholly disproved by the findings of the board, which expressly states the board did consider the evidence of appellant in regard to this character of property owned by it.

(See Transcript 644 and 645, pages 27 and 28.)

The District Court held that the board made due allowance for the excess value of appellant's property outside the State, if it has any, and gave due consideration to the claim of appellant in respect to its non-operative property.

The court said:

"It would seem that, at least, in the matter of terminals, the mileage outside of Kentucky exceeded in value that inside to a substantial extent. And according to the decision of the Supreme Court of the United States referred to in my opinion in the L. & N. R. R. Co. case no part of such excess value should have been apportioned to Kentucky. I think, however, that it must be taken that the board made due allowance for this excess value in fixing the fair cash value of plaintiff's capital stock subject to apportionment at $280,000,000; plaintiff claimed before it that such excess value should not be apportioned. The board in its minute noted the fact of the claim and that it had been duly considered. The sum which it fixed for apportionment was over $130,000,000 less than the value of plaintiff's capital stock, taking its plant to be worth the cost of reproduction less depreciation and its other assets at their book value. It was over $50,000,000 less than what the board valued it at on the capitalization plan; over $37,000,000 less than its valuation on the stock and bond plan and nearly $20,000,000 less than what plaintiff has valued it in this case on that plan. Besides, it was only $47,776,123 more than what plaintiff claimed before the board should be apportioned on account of plaintiff's plant alone, to-wit: $232,223,887. In addition to this there was subject to apportionment, as I have already held, plaintiff's personal assets, the book value of which was $46,836,867—so that the board apportioned not as much as $1,000,000 more than what was subject to apportionment according to plaintiff's own figures. Besides the board was shut up to plaintiff's own figures on which it based its claim as to excess value. It was not in position to make such figures itself or to obtain them from others. It had a right to make some allowance on this account on the idea that plaintiff had presented them in the most favorable light to it. The fact that plaintiff presented four different methods of ascertaining the value of the franchise which differed so widely in their results, the difference between the valuation of plaintiff's capital stock on the stock and bond plan and

that on the net income plan being as much as $75,000,000, was calculated to make the board doubtful of its claims. That it was mistaken in the figures which it gave in other particulars has been shown by plaintiff itself in this case. The amount to be deducted on account of the personal assets, if plaintiff was entitled to such deduction, was over $9,000,000 less than plaintiff claimed before the board; the valuation of plaintiff's capital stock on the capitalization plan was nearly $13,000,000 more; and the valuation on the stock and bond plan was nearly $25,000,000 more."

(Transcript 644 and 645, page 146.)

In the case of Missouri vs. Dockery, 191 U. S., 165, 48 L. Ed., 133, this court in discussing an allegation of fraud said:

"But if this consideration be laid on one side, it is impossible to say that the Board of Equalization has not acted with regard to those companies which it has assessed. It has laid a substantial tax upon them. Its judgment is final under the Missouri Constitution and Statutes. Mo. Const., Art. 10, 18; Rev. Stat., 9344, 9356; Stat. 1901, p. 232. If, nevertheless, we assume that mandamus would lie upon a clear case of fraud adequately alleged and proved (State Board of Equalization vs. People, 191 Ill., 528, 539; 58 L. R. A., 513; 61 N. E., 339), it would be a strong thing to revise the judgment of the board on the strength of allegations of under-valuations, and the single adjective 'fraudulent' without more specific allegations of fact. State, ex rel. Gottlieb vs. Western Union Telegraph Co., 165 Mo., 502, 516, 517; 65 S. W., 775; State, ex rel. Folk vs. Talty, 166 Mo., 529, 560; 66 S. W., 361; Manchester vs. Furnald, 71 N. H., 153, 158; 51 Atl., 657; Knight vs. Thomas, 93 Me., 494; 45 Atl., 449; Maish vs. Arizona, 164 U. S., 599, 611; 41 L. Ed., 567, 571; 17 Sup. Ct. Rep., 193; Pittsburg, C. C. & St. L. R. C. vs. Backus, 154 U. S., 421, 434, 438; 38 L. Ed., 1031; 14 Sup. Ct. Rep., 1114; see Fogg vs. Blair, 139 U. S., 118, 127; 35 L. Ed., 104, 107; 11 Sup. Ct. Rep., 476."

In the case of Western Union Telegraph Co. vs. Taggart, 163 U. S., 1; 41 Ed., 49, the court, referring to the case of Western Union Telegraph Co. vs. Attorney General, 125 U. S., 546; 31 L. Ed., 749, said:

"It was further argued in that case that the tax was excessive and invalid because, in ascertaining the whole valuation of the stock, no deduction was made on account of the value of real estate and machinery, situated and subject to local taxation outside of the State of Massachusetts; although it appeared that the company owned lands and buildings outside of the State, the cost of which was more than $3,000,000 and upon which it has been assessed and had paid taxes of more than $48,000.

"The court, notwithstanding, declared that it did not feel called upon to defend all the items and rules by which the authorities of the State arrived at the taxable value on which its ratio of percentage of taxation should be assessed, or to hold the tax void because the court might have adopted a different system had it been called upon to accomplish the same result and decided that the rule adopted to ascertain the amount of the value of the capital engaged in business within the boundaries of the State, on which the tax should be assessed, was not an unfair or an unjust one, and that the details of the method by which this was determined did not exceed the fair range of legislative discretion."

It also appears in the record that the Attorney General of State, the legal adviser of the board by statutory enactment, was called upon by it for an opinion as to the legality of the claim or contention of appellant, that it was entitled to have its property assessed at 60% of its value because it was claimed that other forms of taxable property in the State was assessed on that basis. The Attorney General advised the board in writing that, in his opinion, the evidence before the board did not bear out the claim that other property in the

State was generally, systematically and intentionally assessed at 60% of its fair cash value.

He advised the board that under the Constitution and laws of the State, it was the duty of the board in the performance of its official duties to assess the property of appellant and all others at its fair cash value, even though they might be convinced by the evidence before it that other property in the State was assessed at less than its fair cash value.

He also stated to the board in that opinion that the Constitution of the United States did not require the several States of this union to equally and uniformly assess all property within their territorial limits, and cited to the board the many decisions of this court so holding.

This case then, in so far as it rests upon the ground of fraudulent conduct of the board, is reduced to this:

It appears the evidence before the board showed the value of appellant's property in this State to be worth not less than $28,000,000 in round numbers, but because the board would not make an assessemnt thereon at 60% of that sum, it is claimed for appellant that the assessment was fraudulent, although the board was advised by the Attorney General of the State that it would be illegal to base appellant's assessment on any standard of value other than fair cash value under the Constitution and laws of the State.

The District Court held the board was not guilty of fraud. The court said:

"The plaintiff makes two attacks on the action of the board. One is in its apportioning a part of $280,000,000 to Kentucky on the mileage basis. The other is in not equalizing the amount so apportioned thereto with the assessment of property generally therein by reducing it 60% of its fair cash value. No attack is made upon the percentage of apportionment which the board adopted

in apportioning. The second attack will have to be sustained on the grounds set forth in my opinion in the L. & N. R. R. Co. cases. * * *

* * * "In considering this attack it must be borne in mind that this court in exercising what Mr. Justice Holmes characterizes its 'extraordinary jurisdiction.' And that jurisdiction can not be exercised unless the board has been guilty of fraud or adopted a fundamentally wrong principle. It is not claimed that it was guilty of fraud. So that whether the attack is to be sustained depends on the question whether the board in so apportioning adopted a fundamentally wrong principle."

(See Transcript 644 and 645, pages 143-144.)

We submit the District Court did not err in holding there was no proof that defendants were guilty of fraud.

THE EVIDENCE IN THIS CASE DOES NOT JUSTIFY THE CONCLUSION THAT ALL PROPERTY IN KENTUCKY OTHER THAN THAT OF RAILROADS IS UNIFORMLY AND DESIGNEDLY ASSESSED AT LESS THAN SIXTY PER CENT. OF ITS VALUE.

Appellant alleged and attempted to prove that all property in the State, other than that of the class owned by it, was uniformly, habitually and designedly assessed for taxation by the assessors for the years in question at only about 60% of its real value, which imposed upon appellant and others in its class an undue proportion of the public burden laid in the form of a tax.

When the validity of a tax is questioned because it is levied in violation of the rule of uniformity, it is incumbent on the complainant to allege and prove that other property in the State is uniformly, designedly, habitually and intentionally under assessed or undervalued for taxation and that complainant's property is assessed and taxed on a higher valuation than other forms of property in the State.

In the case of Coulter vs. Louisville and Nashville Railroad Company, 196 U. S., 599, and 49 L. Ed., page 618, the court said:

"It is not contended that a mere undervaluation would be enough. It is admitted that it must have been systematic and intentional. * * * Inequality, we repeat, is nothing, unless it was in pursuance of a scheme."

The doctrine announced in that case was reiterated and reaffirmed by this court in the case of C. B. & Q. Railroad Company vs. Babcock, 204 U. S., 585, 51 L. Ed., page 640. The court said:

"A point less pressed than the foregoing was that the other property in the State was greatly undervalued and that thus the rule of uniformity prescribed by the Constitution of Nebraska had been violated. Upon this matter it is enough to say that no scheme or agreement on the part of the county assessors who taxed the other property was shown, or on the part of the Board of Equalization and Assessment, and to refer to Coulter vs. Louisville & N. R. Co., 196 U. S., 599, 49 L. Ed., 615, 25 Sup. Ct. Repor. 342."

In the case of German National Bank vs. Kimball, reported in 103 U. S., 732, 26 L. Ed., 469-470, Justice Miller, in delivering the opinion of the court, said:

"An apparent exception to the universality of the rule is admitted in People vs. Weaver, 100 U. S., 539, 25 L. Ed., 705; Peton vs. Commercial National Bank, 101 U. S., 143, 25 L. Ed., 901, and Cummings vs. Merchants' Nat. Bank, 101 U. S., 153, 25 L. Ed., 903. It is held in these cases that when the inequality of valuation is the result of a statute of the state designed to discriminate injuriously against any class of persons or any species of property, a court of equity will give appropriate relief; and also where, though the law itself is unobjectionable, the officers who are appointed to make assess-

ments combine together and establish a rule on the principle of valuation, the necessary result of which is to tax one species of property higher than others, and higher than the average rate, the court will also give relief. But the bill before us alleges no such agreement or common action of assessors, and no general rule or discriminating rate adopted by a single assessor, but relies on the numerous instances of partial and unequal valuation which establish no rule on the subject."

Appellant in this case, to make out its claim in this respect, introduced the affidavits of three or four residents of several counties in the State, who stated that in their opinion the property in those counties was assessed for taxation at about 60% of its real value. The affiants did not give the reasons for their belief. They merely stated their conclusions that such was the case, but did not state any facts which would enable one to form an intelligent opinion as to the reasonableness of affiants' conclusions. The affiants did not state the extent of the investigation they had made in respect to the ratio of assessed to true value in their counties. There was no official or other duty resting on them to ascertain and correctly determine the truth in respect thereto. It might be their opinion that property in the county was undervalued for taxation, but is their judgment and opinion to be regarded as infallible? If these affiants possess such information why did they not proceed in the courts of the State and cause the removal of the assessor from office—as they might have done?

If these volunteer witnesses for appellant had manifested the same interest in the cause of good government by furnishing the information they had as to the undervaluation of property in the county, to the assessor and the county and State Board of Equalization whose duty it was to cause all property therein to be listed at its fair cash value, as they showed in behalf of appellant

by volunteering their services as witnesses to the fact that the law in their community had been intentionally, and systematically violated by the officials of the county for years, more credence might be attached to their affirmations.

The assessors of the counties were acting under oath when they fixed the valuations on property for taxation in the State. Their judgment was rendered after investigation and upon evidence. Their findings were reviewed by a county board created by law for that purpose, the members of which likewise were acting under oath and with the consciousness of official obligation resting upon them. The judgments of these officials are entitled to the same respect and consideration accorded to the judgments and decrees of other tribunals created by law. The verdict of a jury will not be set aside because in the opinion of a few bystanders the question determined by them should have been decided otherwise. The decrees of the courts are not reversed on the contrary opinions of lawyers.

In addition to the affidavits of these volunteer assistants to appellant, it offered in evidence a report made by the Kentucky Tax Commission, a body created by the General Assembly of 1912 for the purpose of proposing to its next session a revenue and taxation measure for the State. It does not appear that it was created for the purpose of ascertaining the ratio of assessed to true value of property in the State. However, this body, in its report, filed as an appendix thereto a table showing the results obtained when the estimate of true value as shown by the Federal Census report for the year of 1910 was compared with the assessment made in 1912.

No convincing reason has been advanced showing why greater importance should be attached to estimated valuation placed on real estate in Kentucky by the Federal Census Enumerators than should be given to the

valuation made by the duly elected land assessor of the State. The Federal Census enumerator was not charged with the duty of hearing evidence and determining the value of land and buildings thereon in the State but was required only to correctly set down the estimate of value put thereon by the owner. When due allowance is made for the natural inclination of the property owner on account of his vanity to exaggerate the value of his holdings, the discrepancy in the valuation fixed by the two officers may be easily explained and accounted for.

The Tax Commission may have fallen into an error in their calculations of ratio of assessed to true value. Indeed this is most possible in the light of the report of the Commissioner of Agriculture for the Commonwealth of Kentucky for the year of 1914. This report was not published when this case was tried in the District Court, but it is a sworn report of an official of the State and this court may take judicial notice of its contents. It contains a table prepared by the Commissioner of Agriculture showing the ratio of assessed to true value of all real estate in Kentucky by counties and it is therein shown that the real estate in Kentucky is assessed at full value when compared with the estimated values fixed thereon by the Federal Census in 1910.

This conflicting evidence is a complete justification of the rule which forbids the consideration of extrinsic evidence to impeach a judgment rendered by a tribunal created by law for the determination of matters regularly submitted to it for decision.

The Federal Census Enumerator was not charged with the duty of determining the fair cash value of all the real estate in Kentucky. If he had been, perhaps his judgment would not have been in accord with the report made.

If he was, the evidence upon which he acted might have been different in character from that upon which the assessor acted.

The decision of either should not be questioned or impugned until after a review of the testimony which was before them when their judgment was rendered.

If the report of the Tax Commission referred to is admissible as evidence, it does not prove the contention of appellant that all real estate in Kentucky is uniformly and systematically assessed at 60% of its real value. In fact the reverse of this proposition is shown by this report. It is therein shown that the variation in the assessments in the several counties in the State range from 30% of true value in Todd county to 80% in Jackson and 78% in Kenton county. A careful examination of the report will reveal the fact that a large proportion of the value of the land and property in the State is assessed in excess of 60% of its real value if the estimates therein made are to be relied upon.

The counties having a low assessment according to this report have a small proportion of the wealth of the State. The large and populous counties of the State and those containing a large proportion of the wealth of the State are shown to be assessed in excess of 60% of their real value.

The Attorney General of the State filed with the board a statement showing that eight counties in the State containing more than one-third the land values of the State were assessed at more than 80% of their real value.

(See Transcript 642 and 643, page 242.)

When the value of the properties of these counties are added to the value of the property in the State situated in other counties that are assessed in excess of 60% of their real value, it will be conclusively demonstrated according

to the evidence of appellant that more than half of the real property in the State is assessed at 80% of its real value.

This evidence absolutely destroys the theory or claim of appellant that all real and personal property in the State is uniformly and designedly assessed at less than 60% of its real value. It shows both lack of intention on the part of the assessors and lack of uniformity of assessment on this class of property. For illustration. The report of the Tax Commission shows that all property in Taylor county is valued according to the census report at $3,116,967, and is assessed at 30% of its real value. That Jefferson county with $23,715,574 of real property in its borders is assessed at 60.5% of its value. If these were the only counties in the State this would not show that all property in the State was uniformly and intentionally assessed at an average rate of 45% of its real value. The average of ratio would be 45%, but the average valuation would be much greater.

The evidence in this case offered by appellant shows conclusively there was no common agreement, intention or design on the part of the various land assessors to uniformly under value for taxation the real estate assessed by them in their respective counties. The fact that several counties in the State were assessed according to this evidence at different percentages of true value absolutely destroys the theory of concerted action by the assessors.

Appellant also introduced one of the former members of the Board of Equalization of the State to show that the board in revising and equalizing the assesments of the various counties in the State did not apply the standard of fair cash value when equalizing the assessments between the counties as the statutes of the State require that board should do. He testified that instead of applying the standard of fair cash value the board would take as the

standard of valuation the county which was "least badly assessed." It is shown by the testimony of appellant that many counties in the State were assessed at approximately 80% of their value. As 100% would be a perfect assessment 80% would be the nearest approach to a true assessment. If the board adopted the standard of the least "badly assessed county" as witness testifies, then 80% and not 60% was the standard.

This is the only member or ex-member of the Board of Equalization that was offered to stultify the work of that board. We submit this evidence is incompetent. The witness proved by his testimony that he misinterpreted the law of the State in the performance of his official duties. He testified that he did not construe his oath to require the board to see that property was "equalized and assessed at its fair cash value." He conceived it to be the duty of the board "to equalize taxation between counties," "whatever the assessment was."

(See page 216, Transcript 642 and 643.)

This shows his misconception of the law governing the assessment of property. The witness confessed he was the author of the humorous report made by the board to the Governor. He is a great humorist but a very poor lawyer. The board of which he was a member was composed of eight members and not one of the other seven was introduced in the trial of this case to corroborate the testimony of the witness Garner.

The misconception of the law entertained by the witness and the official misconduct of which he was guilty ought not to be imputed to the other members of the board in the absence of a showing they were likewise guilty of misconduct.

Appellant also offered an affidavit filed by Geo. W. Lamb in the L. & N. case against the board in which the witness states certain conclusions, deductions and infer-

ences that may be drawn from the report of the census bureau of the United States in its volume on Wealth, Debt and Taxation, which shows the ratio of assessed to true value of all property in Kentucky, is about 60%. This affidavit is so involved in its statement that it is almost incomprehensible. It is sufficient to state that there is not one statement of fact in it that in any wise tends to prove that real property in Kentucky is systematically, intentionally or uniformally assessed at 60% of its true value.

A careful review of all the testimony offered by appellant not only refutes the contention that all property in the State other than railroad property was intentionally and uniformally assessed at 60% of its real value for the years in question, but on the contrary makes plain there was no common agreement among the land assessors of the State to so assess property. Unless such agreement existed, plaintiff's case on this ground must fail.

The affidavits offered in evidence by the appellees of 95 ex-assessors of the State who are now out of office and without ulterior motives in so stating, that they did not while in office intentionally or otherwise assess property at what they believed to be less than the fair cash value thereof and the presumption that must be indulged that such officers faithfully performed their duty, must overcome the vague and inconsistent testimony offered in behalf of appellant.

If it is true that property in some counties in the State is assessed at 80% and some at 60% and others at 50% of its true cash value and the assessment of appellant's property is scaled down by the court to average percentage of assessed value such proceeding would not bring about equality of assessment and taxation between the property of appellant and others of its class and other property in the State. Lack of uniformity and equality in assessments would still exists but in a different degree.

Equality and uniformity can only be attained by applying the same standard of assessment to all property in the State. This proceeding of appellant does not seek to accomplish that purpose, or if it does, the relief, obtained, does not bring about that result in the State.

If appellant is entitled to have its assessment reduced to 60% of the real value of its property then every other taxpayer in the State is entitled to the same relief. When all assessments in the State made on basis of more than 60% of the value of the property have been reduced to a 60% basis by the courts in order to conform to the average assessment, then proceedings can be renewed to again reduce the assessment on all property in the State that is assessed higher than the lowest assessment on property in the State.

It appears from the evidence offered by appellant that property in some counties in the State is assessed as low as 30% of its value. When property in the counties of the State which is now assessed above 60% of its value has the assessment thereon reduced to a 60% assessment by decree of court at once, the average assessed value of the property in the State is again changed and another proceeding may be maintained to change the assessments to the new average so made, and so on, *ad infinitum*, until finally the lowest assessment prevailing on property in the State becomes the standard of valuation for all assessments therein. When this is accomplished utter confusion will reign in its fiscal affairs and government in the State will be rendered impotent for want of revenues.

The constitution and statutes prescribed the limit of the tax rate that may be levied by the counties, cities and towns therein on the assessed valuation of all property in the State, and when the assessment on all property is made at one-third of its value, the revenues of the State have been correspondingly diminished.

If the courts assume jurisdiction of all tax controversies between the State and some tax payers, on the ground that other taxpayers in the State are assessed at a less percentage than complainant, litigation in the State would be never ending and the Federal Courts would be the complainants' final refuge because the highest State Court has refused to take jurisdiction of such complaints, holding that the Constitution and statutes do not afford relief on these grounds.

If the courts should intervene and set aside the standard of valuation fixed by the Constitution and statutes of the State for the assessment of property therein because some assessor or set of assessors in the State have fixed a different standard for assessment purposes, it is thereby made possible for an officer of the State to render inoperative the laws thereof, and no officer or citizen of the State should have it in his power to suspend a statute of the State or render nugatory a provision of its Constitution.

If all other property in the State was assessed at its full value, then so much of plaintiff's case as is based upon the claim of inequality and lack of uniformity in assessment throughout the State must fail. Therefore the assessors of the State by undervaluing one class of property therein have made it incumbent on other officers of the State to likewise ignore the Constitution and statutes of the State, if the contention of appellant is sound. The net result of which is, the Constitution and laws of the State are nullified and set aside. The assessor in making his assessment would be required to follow the rule established in a given year by the assessor that acted first. If the land assessors had not completed their assessments when the Board of Valuation and Assessment convened to make assessments on property of appellant, then it could follow the Constitution and statutes and fix an assessment as therein directed. But if the contention of ap-

pellant is sound because the land assessors had acted and assessed other property at less than its full value, the board must do likewise. This proposition is wholly untenable and cannot be supported by sound reason. The first class or set of assessors that act in a given year fix the standard that must be followed by others, though their action be in direct violation of the statute and Constitution of the State.

THE PROPERTY OF OTHER RAILROAD COMPANIES AND PUBLIC SERVICE CORPORATIONS IN THE STATE WERE NOT ASSESSED BY THE BOARD ON A DIFFERENT BASIS, AND BY A MORE FAVORABLE METHOD THAN WAS APPLIED TO APPELLANT.

The appellant charges the board applied a different rule or method of ascertaining values when assessing its property than that adopted when ascertaining the value of property of other corporations for assessment, and thereby other corporations in the State were assessed on a more favorable basis than that applied to appellant.

It is sufficient to say in answer to this charge that there is no evidence in this record to sustain this contention and it is contradicted by other averments in the bill. In the 1912 case the appellant made the following allegations in respect to the assessments made on the franchise of other corporations in the State for that year which is a complete refutation of the charge of unjust discrimination.

"* * * and that pursuant to and in accordance with such assurances and declarations, the defendants composing the State Board of Valuation and Assessment proceeded to carry out their assurances given to the members of the General Assembly, by enormously increasing the franchise assessments of the leading public

service corporations in the State of Kentucky, so as to increase their respective burdens of taxation as follows:

Name of Corporation	Franchise Assessment for 1911	Franchise Assessment for 1912
Illinois Central	$ 4,510,320	$14,746,857
L. & N. R. R.	11,899,200	45,428,074
C. & O. R. R.	2,745,350	18,798,630
Q. & C. R. R.	3,559,320	10,674,200
L. H. & St. L.	1,090,200	1,500,000
Southern Railway	1,011,984	1,500,000
K. & I. Terminal Co.	529,600	1,429,600
Lexington & Eastern	138,800	250,000
Mobile & Ohio	406,276	600,000
Glasgow	73,500	113,500
Ohio Valley	201,750	283,328
Ashland Coal & Iron	242,660	343,000
Pennsylvania Term'l		50,000
Louisville & Sou. Ind.	4,982	20,000
Louisville Ry. Co.	6,800,270	8,111,125
Louisville Interurban		1,299,750
So. Covington & Cin.	1,500,000	5,000,000
Maysville St. Ry.	25,000	60,000
Union Lt. Ht. & Pr. Cov	1,600,000	2,500,000
Kentucky Electric, Lou.	300,000	550,000
Louisville Lighting Co.	2,500,000	3,100,000
The Pullman Co.	300,000	600,000
Adams Express Co.	605,000	900,000
American Express Co.	150,000	200,000
Southern Express Co.	250,000	350,000
Western Union Telegraph	359,000	618,000
Postal	34,000	82,000

(See page 9, Transcript 642 and 643.)

The District Court in passing on this phase of appellant's case, said:

"The other consideration is that the assessment of plaintiff cannot be said to be out of line with the other assessments involved before me in similar litigation in

being unreasonably higher than any of them, whereas to accept plaintiff's position would make it unreasonably lower. As I leave plaintiff's franchise assessment its whole assessment, tangible and intangible, is at the rate of about $36,450 per mile, which makes the par value about $60,750 per mile. The assessment of the Louisville and Nashville Railroad Company is at the rate of about $35,125, the par value about $58,540 per mile. That of the Chesapeake & Ohio Railway Company is about $34,250 per mile, which makes the par value about $37,000 per mile. And that of the C. N. O. & T. P. Ry. Co. is about $71,650 per mile, which makes the par value about $119,425 per mile. The latter is so much larger than any of the others that it makes one question whether there has not been some mistake. But it is the simplest of all four to handle. There must be something exceptional about it to lead to so much greater assessment and valuation than in the other cases. The Chesapeake & Ohio Ry. Co. is charged only slightly less mileage than plaintiff and about $2,000 per mile less assessment and about $3,500 per mile less valuation. But included in its mileage is 105.7 miles as to which it only has a traffic arrangement, such mileage being part of the mileage of other companies, and 39.3 miles of very inferior mileage. Certainly then the plaintiff's assessment is not out of line with those of the C. N. O. & T. P. Ry. Co. and C. & O. Ry. Co. Possibly there is no reason why its assessment per mile should exceed that of the L. & N. R. R. Co., but I have no data by which this can be determined. According to plaintiff's contention that it should not be assessed for franchise at all its assessment would be about $22,100 per mile and according to its present view that the assessment should not be more than $1,728,605 it would be at the rate of about $25,000 per mile, which makes par value about $42,000 per mile, or about $15,000 per mile lower than the lowest of the others."

This finding of the District Court so effectually disposes of this contention of appellant that no further comment is necessary.

CONCLUSION.

From a review of the authorities herein cited and upon consideration of the bill and answer and exhibits thereto attached and the evidence, we submit the following propositions are maintained:

First. Equality and uniformity of taxation of all kinds of property in the State is not a right guaranteed by the Federal Constitution and the District Court erred in so holding.

Second. That the Constitution and Statutes of the State of Kentucky require that all property in the State shall be assessed at its fair cash value, but a failure of one class of assessors of the State to assess property as the law required does not justify the assessor of another class of property in likewise violating the law. That if the assessment against the property of appellant is not more onerous than it should be, it is legal and valid, and will not be overthrown by the courts.

Third. That the Constitution of the State provides that the General Assembly may provide how railroads and railroad property in the State shall be assessed and taxed. That the assessment complained of herein was made in pursuance of and in conformity to the statute of the State governing the assessment of railroads therein and, therefore, is a legal and valid assessment.

Fourth. That if it is true that the property of railroads in the State is assessed for taxation on a higher basis of valuation than other property in the State is assessed, the State had a right to so assess it and, therefore, this suit cannot be maintained.

Fifth. The evidence clearly shows, that appellant's property in Kentucky is of greater value than the sum at which it was assessed for the years in question, and, therefore, the assessment thereon is not exorbitant and excessive in amount as charged by appellant.

Sixth. The board in ascertaining the value of appellant's property did not pursue an erroneous method or adopt a fundamentally wrong principle, and thereby impose upon appellant an excessive and unlawful assessment.

Seventh. The evidence in the case does not warrant the belief that other forms of property in the State was habitually, intentionally and uniformly or otherwise assessed at 60% of its fair cash value.

Eighth. The evidence in this case does not justify the belief that the members of the board were guilty of any fraud in making the assessment, nor is there any evidence that would warrant the assertion it was compelled by political duress to make the finding herein complained of.

Ninth. That appellant's action to enjoin the taxes due the State on the assessment complained of, is a suit against the State and cannot be maintained and the District Court erred in its refusal to dismiss the bill of appellant on that ground.

Therefore, we respectfully submit that so much of the decree of the District Court as ~~impaired~~ enjoined the collection of any part of the tax levied under the assessment made should be reversed.

Respectfully submitted,

Marvel J. Mills
Attorney General.

JOHN L. RICH,
Special Counsel,
Attorneys for Appellees.

CHARLES CARROLL,
Of Counsel.

APPENDIX

SECTIONS OF THE CONSTITUTION OF KENTUCKY REFERRED TO IN BRIEF.

§ 171. Levy and collection of by general laws—uniformity. The General Assembly shall provide by law an annual tax, which, with other resources, shall be sufficient to defray the estimated expenses of the Commonwealth for each fiscal year. Taxes shall be levied and collected for public purposes only. They shall be uniform upon all property subject to taxation within the territorial limits of the authority levying the tax; and all taxes shall be levied and collected by general laws. (See Sec. 4019, Ky. Stats.)

§ 172. Assessment—how value fixed—penalty. All property, not exempted from taxation by this Constitution, shall be assessed for taxation at its fair cash value, estimated at the price it would bring at a fair voluntary sale; and any officer, or other person authorized to assess values for taxation, who shall commit any willful error in the performance of his duty, shall be deemed guilty of misfeasance, and upon conviction thereof shall forfeit his office, and be otherwise punished, as may be provided by law. (See Sec. 4043, Ky. Stat.)

§ 174. Corporate, to be taxed like individual property—incomes—licenses—franchises. All property, whether owned by natural persons or corporations, shall be taxed in proportion to its value, unless exempted by this Constitution; and all corporate property shall pay the same rate of taxation paid by individual property. Nothing in this Constitution shall be construed to prevent the General Assembly from providing for taxation based on income, licenses or franchises. (See further as to license and franchise tax, Sec. 181.)

§ 182. Railroads—assessment of. Nothing in this Constitution shall be construed to prevent the General Assembly from providing, by law, how railroads and railroad property shall be assessed and how taxes thereon shall be collected. And, until otherwise provided, the present law on said subject shall remain in force. (See Sec. 4096, Ky. Stats.)

§ 227. Officers liable to indictment for misfeasance or neglect—appeal. Judges of the County Court, Justices of the Peace, Sheriffs, Coroners, Surveyors, Jailers, Assessors, County Attorneys and Constables shall be subject to indictment or prosecution for misfeasance or malfeasance in office, or willful neglect in discharge of official duties, in such mode as may be prescribed by law; and upon conviction his office shall become vacant, but such officer shall have the right to appeal to the Court of Appeals. (See Sec. 3748, Ky. Stat. and Con., Sec. 68.)

§ 228. **Oath to be taken by all officers—form of.** Members of the General Assembly and all officers, before they enter upon the execution of the duties of their respective offices, and all members of the bar, before they enter upon the practice of their profession, shall take the following oath or affirmation: I do solemnly swear (or affirm, as the case may be) that I will support the Constitution of the United States and the Constitution of this Commonwealth, and be faithful and true to the Commonwealth of Kentucky so long as I continue a citizen thereof, and that I will faithfully execute, to the best of my ability, the office of ..... according to law; and I do further solemnly swear (or affirm) that since the adoption of the present Constitution, I, being a citizen of this State, have not fought a duel with deadly weapons within this State, nor out of it, nor have I sent or accepted a challenge to fight a duel with deadly weapons, nor have I acted as second in carrying a challenge, nor aided or assisted any person thus offending, so help me God.

SECTIONS OF THE KENTUCKY STATUTES REFERRED TO IN BRIEF.

§ 4020. (2) **Property subject—tangible and intangible property—franchises.** All real and personal estate within this State, and all personal estate of persons residing in this State, and of all corporations organized under the laws of this State, whether the same be in or out of the State, including intangible property, which shall be considered and estimated in fixing the value of corporate franchises as herein provided, shall be subject to taxation unless the same be exempt from taxation by the Constitution, and shall be assessed at its fair cash value, estimated at the price it would bring at a fair voluntary sale: Provided, however: That tangible personal property located and having a taxable situs without the State, of persons residing in this State, and of all corporations organized under the laws of this State, shall not be subject to taxation: And, provided further, That the situs of intangible personal property for purposes of taxation shall be at the residence of the real or beneficial owner, and not at the residence of the fiduciary or agent having the custody or possession of same. Provided further, That nothing herein contained shall in any way affect the liability for franchise taxes now payable by corporations organized under the laws of this State. (Section as amended by act March, 1908, p. 121.)

§ 4044. (2) **Oath, assessor, deputies shall take.** The assessor and his deputies, before they enter upon the duties of the office, shall, in addition to the oath prescribed by the Constitution, take the following oath: "I do swear that I will administer to every person listing property of any description the oath prescribed by law, and fix the value of all property to be listed by me at its fair cash value, estimated at the price it would bring at a fair voluntary sale, without favor or partiality; and I will diligently search and inquire so that no person shall be

passed over, or shall fail to have an opportunity to give a list of his taxable property, and that I will truly report all persons who shall fail or refuse to list their taxable property, after being duly called on by me for that purpose, or who have given in a false or fraudulent list, so help me, God."

§ 4045. (3) **Bond of assessor—action on.** The assessor shall at the same time execute bond to the Commonwealth, with good surety, to be approved by the county court, for the faithful discharge of the duties of his office, which bond shall be filed in the office of, and kept safely by, the clerk of the county court, and on which the assessor and his sureties shall be liable for any violation of the duties of his office, by himself or any of his deputies. Action may be instituted on it by the Commonwealth or any person aggrieved, and recovery had thereon, from time to time, to the extent of the injury sustained.

§ 4047. (5) **Oath to taxpayer—assessor may correct list.** The assessor or his deputies shall read and administer to every person listing property the following oath: "You swear that the list of taxable property about to be given by you will contain a full and complete list, and the best description you can give, of all and every species of property belonging to you or in your possession, subject to taxation on the first day of September last, including all money, notes, bonds or other evidence of debts except bonds not taxable, and stock incorporations whose property and franchise have been listed by the corporation, and that, according to your best judgment, you will value your property at its fair cash value, estimated at the price it would bring at a fair voluntary sale; and that you will true and perfect answers make to all questions that may be asked you concerning your taxable property, or that of others in your possession, or about to be listed by you for them." If, in the opinion of the assessor or deputy, there be any error in any list, it shall be his duty to note same on his tax books so as to call the attention of the board of supervisors thereto.

§ 4051. (9) **False statement or device to escape taxation—penalty.** If any person shall willfully make a false statement, or, for the purpose of avoiding taxation, make a temporary investment in securities exempt by law from taxation, or convert any intangible property into non-taxable property outside of this State, or resort to any device whatever for the purpose of avoiding taxation, he shall be deemed guilty of a misdemeanor, and, on conviction, fined any sum not exceeding five hundred dollars, and be subect to three times the amount of tax upon his estate, to be recovered by the sheriff by action in the name of the Commonwealth in the county in which the estate is liable for taxation, or by the auditor, when the taxes are payable to him, in the Franklin circuit or quarterly court.

§ 4053. (13) **Assessor to fix value upon all estate listed with him—report to supervisors.** The assessor, from his knowledge, and from the statement of the person listing the property for taxation, and such

other evidence as he may be able to obtain upon oath of witnesses sworn by him, shall fix the value upon all the estate listed with him for taxation at its fair cash value, estimated at the price it would bring at a fair voluntary sale, and enter the same in his tax book, in the proper name and title of things, together with the Christian and surname of the person, and other information designated in the form of the tax book prescribed by law, giving also the aggregate value of the property assessed, and, in estimating the value of lands, the increased value, on account of all improvements thereon, shall be taken into consideration. If the value fixed by the assessor be greater than that fixed by the taxpayer it shall be the duty of the assessor to notify the taxpayer at the time of the assessment the amount of such increase and of the time and place of the meeting of the board of supervisors. The assessor shall report to the board of supervisors a list of all taxpayers in the county whose tax lists have been added to or increased by him after receiving them from the hands of the taxpayer, together with a short statement.

§ 4058. (18) Books and blanks—oath to taxpayer. Before the first day of September of each year, the Auditor of Public Accounts shall deliver to each county clerk of this State, for the use of the assessor and their deputies, a sufficient number of assessment books and necessary blank schedules for the assessment of all property, real and personal, with interrogatories to be propounded to each person, with affidavit thereto attached, to be signed and sworn to by the party whose property is assessed. The schedule shall contain two columns. In one the person whose property is assessed shall fix the values. In the other, the assessor shall fix what, in his judgment, is the proper valuation of the property. The party or the assessor where the party can not write shall write the word "none" after each item when he has no property to assess as named in each item; but no item shall be passed without being answered. The following shall be the form of interrogatories and schedules as hereinafter required:

Interrogatories propounded to and answered by ..... of ..... county, ... State of Kentucky, on the ..... day of ....., and schedule of all property held or owned by him on the first day of September, 190...., and the valuation thereof as fixed by him and as fixed by the assessor.

Interrogatories.

No. 1. Are you or were you, on the first day of September of the present year, executor of the will or administrator or curator of the estate of any deceased person, or guardian, committee or assignee, commissioner, receiver or trustee of any person, or have in your possession or under your control any property, money or other thing of value belonging to any other person or corporation? Answer ..... If the answer is "Yes," the person is required to list such

property separate from his own, and in the name of the real owner, and show by whom listed.

No. 2. Have you, before the first day of September of the present year, either personally or through the agency of another, caused any part of your taxable money or other property to be temporarily converted, either by sale, exchange, or any other manner, into any bonds, money or securities not taxable, and any other property not taxable under the laws of this State for the purpose of evading the payment of taxes, or have you resorted to any means or device whatever to evade the payment of taxes on any part of the property owned by you during the twelve months next preceding the first day of September of the present year? Answer ..... If the answer is "Yes," the person shall state all the facts connected with such transaction, and the assessor shall reduce such statement to writing and attach it to the schedule and make a note of the facts in his book, that the attention of the supervisors may be called thereto.

SCHEDULE.

No. of Item	DESCRIPTION OF PROPERTY	Value Fixed by the Person Assessed	Value Fixed by the Assessor
1.	Amount of bonds, number and denomination of bonds and value thereof	$	$
2.	Amount of notes secured by mortgage	$	$
3.	Amount of other notes	$	$
4.	Amount of accounts	$	$
5.	Amount of cash on hand	$	$
6.	Amount of cash on deposit in bank, and against which checks in payment of prior bona fide indebtedness have not been drawn	$	$
7.	Amount of cash on deposit with other corporations	$	$
8.	Amount of cash on deposit with individuals	$	$
9.	Amount of all other credits or money at interest	$	$
10.	Amount of stock in corporations, joint stock companies or associations of this State not paid on by the company or association	$	$
11.	Amount of stock in foreign corporations not exempt by law	$	$
12.	Number of acres of land and price per acre	$	$
13.	Nearest residence thereto	$	$
14.	Election precinct in which situated	$	$
15.	Valuation of each tract with improvements	$	$
16.	Number of city or town lots	$	$
17.	Name of town or city where located	$	$
18.	Value of each with improvements	$	$

19. Number of thoroughbred, saddle and standard stallions ..... $ $
20. Value ..... $ $
21. Number of thoroughbred, saddle and standard geldings ..... $ $
22. Value ..... $ $
23. Number of thoroughbred, saddle and standard mares and colts ..... $ $
24. Value ..... $ $
25. Number of stallions of common stock ..... $ $
26. Value ..... $ $
27. Number of geldings, mares and colts of common stock ..... $ $
28. Value ..... $ $
29. Number of mules and mule colts ..... $ $
30. Value ..... $ $
31. Number of jacks ..... $ $
32. Value ..... $ $
33. Number of jennets ..... $ $
34. Value ..... $ $
35. Number of registered bulls ..... $ $
36. Value ..... $ $
37. Number of registered cows and calves ..... $ $
38. Value ..... $ $
39. Number of bulls, cows, calves and steers of common stock ..... $ $
40. Value ..... $ $
41. Number of sheep ..... $ $
42. Value ..... $ $
43. Number of hogs ..... $ $
44. Value ..... $ $
45. Value of agricultural implements ..... $ $
46. Value of agricultural products ..... $ $
47. Less value of the crops grown in the year assessment was made and in the hands of the producer ..... $ $
48. Value of agricultural products for taxation ..... $ $
49. Number of wagons, carriages, automobiles, bicycles and vehicles of every kind and the value of each separately ..... $ $
50. Value of slaughtered animals ..... $ $
51. Value of safes ..... $ $
52. Value of household and kitchen furniture ..... $ $
53. Value of manufacturing implements, machinery of all kinds ..... $ $

54. Value of pianoforte and other musical instruments ..... $ $
55. Value of raw materials to be used in manufacturing ..... $ $
56. Value of manufactured articles ..... $ $
57. Number of paintings, and value thereof ..... $ $
58. Library—number of volumes—value thereof ..... $ $
59. Number of diamonds, value thereof ..... $ $
60. Value of watches and clocks ..... $ $
61. Value of jewelry ..... $ $
62. Value of gold, silver and plated ware ..... $ $
63. Value of steam engines, including boilers ..... $ $
64. Number of steamboats, sail boats or other water crafts or any interest therein—value ..... $ $
65. Value of mineral products ..... $ $
66. Value of coal mines, oil, gas and salt wells ..... $ $
67. Value of patent rights ..... $ $
68. Present value of annuities and royalties ..... $ $
69. Value of brick, stone and other building materials ..... $ $
70. Value of wines, whiskies, brandies and mixtures thereof not in distillery bonded warehouses ..... $ $
71. Number of stores—value of stock of goods and other property therein ..... $ $
72. Value of property held for another for the purpose of sale on commission or otherwise ..... $ $

Miscellany.

73. Value of all property not mentioned above ..... $ $
74. Total value of property listed as above ..... $ $
75. Less household goods and other personal property of persons with a family, to be deducted from valuation of personal property listed above, not to exceed two hundred and fifty dollars in value ..... $ $
76. Balance of taxation ..... $ $
77. Males over twenty-one years of age.
78. Legal voters. Served in Federal or Confederate army—full name.
79. Enrolled militia.
80. Children between six and twenty years.
81. Number of studs, jacks and bulls for which a service fee was charged.
82. Rate per season.

The following questions are required to be answered for statistical purposes:

83. Pounds of tobacco raised during the year.
84. Pounds of hemp raised during the year.

85. Tons of hay raised during the year.
86. Bushels of corn raised during the year.
87. Bushels of wheat raised during the year.
88. Bushels of oats raised during the year.
89. Bushels of barley raised during the year.
90. Bushels of grass seed and clover seed raised during the year.
91. Tons of coal mined during the year.
92. Tons of pig metal mined during the year.
93. Tons of bloom.
94. Tons of bar iron.
95. Number of acres of wheat raised during the year.
96. Number of acres of corn raised during the year.
97. Number of acres of meadow.
98. Number of acres of woodland.
99. Number of acres of tobacco.
100. Number of dogs over four months of age and description of same.

The following shall be the form of oath which shall be painted on each schedule, which the party whose list is taken shall subscribe and swear to before the assessor or his deputy as soon as such schedule shall be completed; and all persons failing or refusing to take such oath shall be deemed guilty of refusing to give in their property for assessment, and be fined as provided for such offenses.

State of Kentucky,

..... County,

Scilicet.

I do solemnly swear (or affirm) that the foregoing schedule contains a true, full and complete list of all taxable property belonging to me on the first day of September, 19....., and, to the best of my knowledge, belief and judgment, the values fixed by me to the various articles as above, is the fair cash value thereof, estimated at the price it would bring at a fair voluntary sale, and that to the best of my knowledge, belief and judgment, none of said articles would bring any greater sum at any such sale, than as stated above, and that I can not realize any greater sum on the notes and accounts owned and held by me against others than as stated by me in said schedule, and that the answers made by me to the above interrogatories are true.

.....

Subscribed and sworn to before me by ..... this ..... day of ....., after said oath was read to him by me.

....., Assessor.

It shall be the duty of every assessor or deputy to read said oath in full to each taxpayer and to see that no item has been passed unanswered before he shall be allowed to sign or swear to it. Any assessor or deputy who shall violate either of these provisions shall be deemed

guilty of a misdemeanor and, on conviction, be fined fifty dollars for each offense, and any person who shall make a false statement as to any matter with reference to the listing of his property for taxation shall be deemed guilty of false swearing and, on conviction, shall be punished accordingly.

§ 4076. (36) **Penalty for wrongfully listing land.** That any assessor who shall list any of said land in violation of this act shall be guilty of a misdemeanor, and fined not exceeding two hundred dollars for each offense.

§ 4076a. (37) **Penalty for failure of duty by assessor.** The assessor shall, for any failure of his duty under this law, where no other penalty is provided, be fined in any sum not less than twenty-five dollars nor more than fifty dollars.

§ 4115. (1) **County judge to appoint—number.** The county judge, except in counties having a city therein of the first, second, third or fourth class, shall, at the November term of each court, appoint five intelligent, discreet housekeepers and owners of real estate residing in different portions of the county and in counties having a city therein of the first or second class he shall appoint three additional persons in such city and from different wards thereof; and in counties having a city therein of the third or fourth class, he shall appoint two additional persons from each city and from different wards thereof, who shall constitute the board of supervisors of tax in their respective counties.

§ 4117. (3) **Oath supervisors shall take.** The supervisors, before they enter upon the discharge of their duties, shall take the following oath: "You swear that you will, to the best of your ability, discharge the duties required of you as supervisor of tax, and that, in each instance where the property has not been assessed at its fair cash value, estimated at the price it would bring at a fair voluntary sale, you will increase or decrease the value and fix the value at what you believe the property would bring at a fair voluntary sale."

§ 4120. (6) **Duty and powers of supervisors.** The board of supervisors shall make a careful examination of the assessor's books, and each individual list thereof, and may increase or decrease any list; but the board shall not reduce or raise any assessment unless the evidence be clear and unmistakable that the valuation is not a fair cash value, and shall list all property omitted by the assessor which may be subject to taxation in the county, and shall correct any errors of the assessor; and in cases where the property has not been correctly valued, they shall fix the value thereof, and correct the assessor's books, so as to show the true value of the property, as herein provided; but should any property escape assessment by the assessors or supervisors, in whole or in part, it may be assessed as provided in section 3, article 15 (4241).

§ 4268. (1) **Appointment—number—term—qualifications—quorum.**

It shall be the duty of the Governor to annually appoint one person for each appellate district of this State, and they, together with the Auditor of Public Accounts, who shall be an ex-officio member without additional compensation, shall constitute a State Board of Equalization and Assessment. No person shall be eligible to appointment on the board by the Governor who is under thirty years old, and he shall be a housekeeper and shall be the owner in fee of real estate located in this State. The members of this board shall hold office for a period of one year, and until their successors are appointed and qualified. The term of office of said persons to be appointed as aforesaid shall begin on the first day of January, one thousand nine hundred and three, and annually thereafter. It shall require five members of said board present to constitute a quorum: Provided, That all seven of the members of said board to be appointed under the provisions of this act on the first day of January, 1908, shall be appointed as follows: Three of same to serve for only two years, and their successors shall be appointed to serve for four years, and the remaining four members appointed on January first, 1908, shall be appointed to serve for four years, and their successors shall be appointed to serve for a period of four years; and all members of said board appointed after 1908 shall serve for a term of four years; and said board shall complete its labors not later than the first day of June in each year.

§ 4269. (2) **Oath of office.** Each member of said board, before entering upon the duties of said office, shall take the oath or affirmation prescribed by the Constitution of the State.

§ 4274. (7) **Percentage of values fixed—notice to county judges—hearing witnesses.** The said board of equalization shall fix the percentage of assessed value of real property at its fair cash value, and all counties whose average lists of real property fall below such value shall be raised to the same, and all those counties whose average lists are above the same, shall be lowered to said cash value. The secretary to the State Board of Equalization shall report to the various county judges of this Commonwealth, as soon as possible, the action of the board in regard to their respective counties, whereupon said judges may, in their discretion, each appoint not exceeding five witnesses to appear under oath before said board in reference to the action of the board. The board shall then revise their action or not, as they may think just and proper. Said witnesses must appear in a reasonable time, or they shall lose their right to be heard. The compensation and expenses of said witnesses, if any, shall be paid by their respective county courts.

§ 4275. (8) **Personal property.** The said board of equalization shall also equalize the personal property of every county in this Commonwealth by adding to or subtracting from the list of personal property, as the case may be, the same per centum as was added to or subtracted from the list of farm lands for the same county, and for this

purpose the average per centum of assessed value to cash value of farm lands shall be used, and in determining such per centum, fractions less than one-half shall be rejected, and fractions of one-half or over shall be counted as one.

§ 4096. (1) To report to auditor—penalty for failure. That the president or chief officer of each railroad company, or other corporation owning or operating a railroad line, in whole or in part, in this State, and all railroad bridge companies owning or operating the bridge spanning a river constituting the boundary of this State shall, on or before the first of August in each year, return to the Auditor of Public Accounts of the State, under oath, the total length of such railroad, including the length thereof beyond the limits of the State, and designating its length within this State, and in each county, city, incorporated town and taxing district therein, together with the average value per mile thereof, and in the respective counties, cities, incorporated towns and taxing districts therein, together with the average value per mile thereof, for the purpose of being operated as a carrier of freight and passengers, including engines and cars, and a list of the depot grounds and improvements, and other real estate of the said company, and the value thereof, and the respective counties, cities and incorporated towns in which the same are located. That if any of said railroad companies own or operate a railroad or railroads out of this State, the president or chief officer of such company shall only be required to return such proportion of the entire value of all its rolling stock as the number of miles of its railroad in this State bears to the whole number of miles operated by said company in and out of this State. Said report shall be made as of the first day of July, and a failure to file said report by the first day of August shall subject the president or chief officer residing in this State to a fine of one thousand dollars, and fifty dollars for every day after the first day of August that he fails to file said report, to be recovered as indicated by section 9 (4104) of this article.

§ 4098. (3) Railroad commission to equalize. The auditor shall lay before the railroad commission, on or before the fifteenth day of August, the returns made to him under this act, and any schedules and valuations he may have made under sections 1 and 2 (4096 and 4097), of this article. And should the valuations, or any of them, in the judgment of said board, be either too high or too low, they shall correct and equalize the same by a proper increase or decrease thereof. Said board shall keep a record of their proceedings, to be signed by each member present at any meeting, and the said board is hereby authorized to examine the books and property of any railroad company to ascertain the value of its property, or to have them examined by any suitable disinterested person, to be appointed by them for that purpose.

§ 4077. (1) Franchise—assessment of. Every railway company or

corporation, and guarantee or security company, gas company, water company, ferry company, bridge company, street railway company, express company, electric light company, electric power company, telegraph company, press dispatch company, telephone company, turnpike company, palace-car company, dining-car company, sleeping-car company, chair-car company, and every other like company, corporation or association, also every other corporation, company or association having or exercising any special or exclusive privilege or franchise not allowed by law to natural persons, or performing any public service, shall, in addition to the other taxes imposed on it by law, annually pay a tax on its franchise to the State, and a local tax thereon to the county, incorporated city, town or taxing district, where its franchise may be exercised. The Auditor, Treasurer and Secretary of State are hereby constituted a board of valuation and assessment for fixing the value of said franchise, except as to turnpike companies, which are provided for in section 1 (4095) of subdivision 4 of this article, the place or places where such local taxes are to be paid by other corporations on their franchise, and how apportioned, where more than one jurisdiction is entitled to a share of such tax, shall be determined by the board of valuation and assessment, and for the discharge of such other duties as may be imposed on them by this act. The Auditor shall be chairman of said board, and shall convene the same from time to time, as the business of the board may require. It shall be the duty of the Attorney General, when requested by the board of valuation and assessment, to attend said board at its meetings and advise with same in its proceedings.

§ 4078. (2) Corporations to report to auditor to determine value of franchise. In order to determine the value of the franchises mentioned in the next preceding section, shall, annually, between the thirtieth day of June and the first day of October, make and deliver to the Auditor of Public Accounts of this State a statement, verified by its president, cashier, secretary, treasurer, manager, or other chief officer or agent, in such form as the Auditor may prescribe, showing the following facts, viz: the name and principal place of business of the corporation, company or association; the kind of business engaged in; the amount of capital stock, preferred and common; the number of shares of each; the amount of stock paid up; the par and real value thereof; the highest price at which such stock was sold at a bona fide sale within twelve months next before the thirtieth day of June of the year in which the statement is required to be made; the amount of surplus funds and undivided profits and the value of all other assets; the total amount of indebtedness as principal, the amount of gross or net earnings or income, including interest on investments, and incomes from all other sources for twelve months next preceding the thirtieth day of June of the year in which the statement is required; the amount and kind of tangible property in this State, and where situated, as-

sessed, or liable to assessment in this State, and the fair cash value thereof, estimated at the price it would bring at a fair voluntary sale, and such other facts as the Auditor may require.

§ 4079. (3) **Value of franchise—how determined—lines extend beyond State or county.** Where the line or lines of any such corporation, company or association extend beyond the limits of the State or county, the statement shall, in addition to the other facts hereinbefore required, show the length of entire lines operated, owned, leased or controlled in this State and in each county, incorporated city, town or taxing district, and the entire line operated, controlled, leased or owned elsewhere. If the corporation, company or association be organized under the laws of any other State or government or organized and incorporated in this State, but operating and conducting its business in other States as well as in this State, the statement shall show the following facts in addition to the facts hereinbefore required: Th gross and net income or earnings received in this State and out of this State, on business done in this State, and the entire gross receipts of the corporation, company or association in this State and elsewhere during the twelve months next before the thirtieth day of June of the year in which the assessment is required to be made. In cases where any of the facts above required are impossible to be answered correctly, or will not afford any valuable information in determining the value of the franchise to be taxed, the said board may excuse the officer from answering such questions: Provided, That said board, from said statement, and from such other evidence as it may have, if such corporation, company or association be organized under the laws of this State, shall fix the value of the capital stock of the corporation, company or association, as provided in the next succeeding section, and from the amount thus fixed shall deduct the assessed value of all tangible property assessed in this State, or in the counties where situated. The remainder thus found shall be the value of its corporate franchise subject to taxation as aforesaid.

§ 4080. (4) **Foreign corporations—franchise—how determined.** If the corporation, company or association be organized under the laws of any other State or government, except as provided in the next section the board shall fix the capital stock in this State by capitalizing the net income derived in this State, or it shall fix the capital stock as hereinbefore provided, and will determine from the amount of the gross receipts of such corporation, company or association in this State and elsewhere, the proportion which the gross receipts of this State, within twelve months next before the thirtieth day of June of the year in which the assessments were made, bears to the entire gross receipts of the company, the same proportion of the value of the entire capital stock or the capitalizing of the net earnings in this State, less the assessed value of the tangible property assessed, or liable to assessment in this State, shall be the correct value of the corporate

franchise of such corporation, company or association for taxation in this State.

§ 4081. (5) **Interstate carrier—franchise—how fixed.** If the corporation organized under the laws of this State, or of some other State government, be a railroad, telegraph, telephone, express, sleeping, dining, palace or chair-car company or a corporation performing any other public service, the lines of which extend beyond the limits of the State, the said board will fix the value of the capital stock as hereinbefore provided, and that portion of the value of the capital stock which the length of the lines operated, owned, leased, or controlled in this State, bears to the total length of the lines owned, leased or controlled in this State and elsewhere, shall be considered in fixing the value of the corporate franchise of such corporation liable for taxation in this State; and such corporate franchise shall be liable to taxation in each county, incorporated city, town or district through or into which such lines pass, or are operated, in the same proportion that the length of the line in such county, city, town or district bears to the whole length of lines in this State; but if any such railroad or other corporation organized under the laws of this State have all of its lines outside of this State, the said board shall fix the value of its entire capital stock as hereinbefore provided, and apportion to this State for taxation therein the proper proportion and not less than one per cent of its said capital stock, and the amount so apportioned shall be the value of its intangible property, including its corporate franchise, stocks, bonds, securities and choses in action, subject to taxation in this State and in the county, city, town and district where its principal place of business in this State may be located.

§ 4082. (6) **Persons engaged in certain business, how valued for taxation.** Whenever any person or association of persons not being a corporation, nor having capital stock, shall, in this State, engage in the business of any of the corporations mentioned in the first section of this article, then the capital and property, or the certificates or other evidences of the rights or interests of the holders thereof in the business or capital and property employed therein shall be deemed and treated as the capital stock of such person or association of persons for the purpose of taxation and all other purposes under this article, in like manner as if such person or association of persons were a corporation.

§ 4083. (7) **Auditor to notify corporation of values.** It shall be the duty of the Auditor, immediately after fixing such values by said board, to notify the corporation of the fact; and all such corporations shall have thirty days from the time of receiving the notice to go before such board and ask a change of the valuation, and may introduce evidence, and the chairman of the board is hereby authorized to summons and swear witnesses and, after hearing such evidence, the board may change the valuation as it may deem proper, and the action of the board shall be final.

§ 4084. (8) Auditor to certify to county clerk. The auditor shall, at the expiration of thirty days after the final determination of such values, certify to the county clerk of the counties, when any portion of the corporate franchise of any such corporation, company or association shall be liable to local taxation as herein provided, the amount thereof liable for county, city, town or district tax, and such certificate shall be by each county clerk filed in his office, and be by him certified to the proper collecting officer of the county, city, town or taxing district for collection, and all county, city, municipal, school and other taxes shall be due and payable thirty days after the notice of the amount of such tax is given by the officer whose duty it is to collect the same.

§ 4086. (10) Pay taxes into State treasury. All corporations and other persons who are required to make reports to the Auditor of Public Accounts shall pay all taxes due the State from them into the treasury at the same time, and shall be liable for and pay the same rate of interest and penalties as defaulting individuals, except where otherwise specially provided.

§ 4090. (14) Corporation failing to report—board to fix values. Should any corporation fail to make the reports as required herein on or before the first day of October of each year, the said board shall proceed to ascertain the facts and values as required by this article, in such manner and by such means as it deems proper, at the cost of the company failing to make the report, and shall fix the value of the corporate franchise liable for taxation as aforesaid and the corporation shall be taxed accordingly.

§ 4091. (15) Taxes when due—penalties—clerks to furnish statement of value of tangible property. All the State taxes assessed against any corporation, company or association, under this article, shall be due and payable thirty days after notice of the same has been given said corporation, company or association by the Auditor; and all county, municipal, school and other taxes shall be due and payable thirty days after notice of the amount of said tax is given by the officer whose duty it is to collect the same; and every such corporation, company or association failing to pay its taxes, after receiving thirty days' notice, shall be deemed delinquent, and a penalty of ten per cent. on the amount of the tax shall attach, and thereafter such tax shall bear interest at the rate of ten per cent. per annum. Any such corporation, company or association failing to pay its taxes, penalty and interest, after becoming delinquent, shall be deemed guilty of a misdemeanor, and on conviction, shall be fined fifty dollars for each day the same remains unpaid, to be recovered by indictment or civil action, of which the Franklin circuit court shall have jurisdiction. It shall be the duty of the county clerk to furnish to the Auditor of Public Accounts, on blanks provided by the Auditor, a statement of the

assessed value of the tangible property of all corporations, companies or associations paying a franchise or other tax under this act.

Any county clerk failing to comply with the requirements of this act shall be guilty of a misdemeanor and, on conviction, shall be fined not less than ten nor more than twenty-five dollars.